LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 24 1956
JOHN T. FEY, Clerk

No. 83

In the Supreme Court of the United States

OCTOBER TERM, 1956

JUNIUS IRVING SCALES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
WILLIAM P. ROGERS,
Assistant Attorney General,
[illegible],
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	4
Communist Party tenets and discipline	7
Petitioner's role as a Party member and leader is conceded	10
Evidence of petitioner's knowledge of the Party's revolutionary teachings and purposes and intent to accomplish them as speedily as circumstances permitted	11
Summary of Argument	23
Argument	32
I. The membership clause of the Smith Act is constitutional on its face and as applied to the facts of this case	32
A. Validity of the clause on its face	33
B. Validity of the statute as applied in this case	48
II. Section 4 (f) of the Internal Security Act of 1950 does not amend the membership clause of the Smith Act so as to exempt membership, with knowledge and intent, in the Communist Party	51
III. The evidence fully supports the verdict	56
A. Evidence as to the party	56
B. Evidence as to petitioner	59
IV. Petitioner received a fair trial	64
A. The denial of petitioner's motion challenging the composition of the grand jury was proper	64
1. Petitioner waived the right to challenge the composition of the grand jury	65
2. In any event, the complaint is on its merits not ground for reversal of the conviction	66

Argument—Continued
IV. Petitioner received a fair trial—Chntinued
Page
B. Evidence relating to the aims and purpose of the Communist Party and petitioner's knowledge and intent was properly admitted 70
C. The trial court acted well within the limits of its discretion in denying petitioner access to reports which had been transmitted to the Federal Bureau of Investigation by the witnesses Clontz and Childs 74
D. The congressional findings in the Internal Security Act of 1950 and the Communist Control Act of 1954 did not preclude a fair trial 77
Conclusion 79
Appendix A 80
Appendix B 95

CITATIONS

Cases:
Accardi v. *Shaughnessy*, 347 U. S. 260 ..... 32, 78
Alford v. *United States*, 282 U. S. 687 76
American Communications Assn. v. *Douds*, 339 U. S. 382 ..... 23, 26, 33, 36, 42, 45
~~*Arnstein* v. *United States*, 296 Fed. 946, certiorari~~
Arnstein v. *United States*, 296 Fed. 946, certiorari denied, 264 U. S. 595 75
Carruthers v. *Reed*, 102 F. 2d 933 66
D'Aquino v. *United States*, 192 F. 2d 338, certiorari denied, 303 U. S. 644 75
DeJonge v. *Oregon*, 299 U. S. 353 44
Dennis v. *United States*, 341 U. S. 494 ..... 23, 24, 25, 26, 33, 38, 39, 40, 41, 44, 45, 47, 48, 49, 50, 51, 52, 78
Dow v. *Carnegie-Illinois Steel Corporation*, 224 F, 2d 414 ..... 30, 69
Dunne v. *United States*, 138 F. 2d 137, certiorari denied, 320 U. S. 790 52
Fay v. *New York*, 332 U. S. 261 68
Frazier v. *United States*, 335 U. S. 497 ..... 66, 68
Frankfeld v. *United States*, 198 F. 2d 679, certiorari denied, 344 U. S. 922 ..... 45, 59, 73

Cases—Continued

	Page
Galvan v. *Press*, 347 U. S. 522	53
Glasser v. *United States*, 315 U. S. 60	30, 69, 76
Goldman v. *United States*, 316 U. S. 129	31, 75, 76
Herndon v. *Lowry*, 301 U. S. 242	44
Hornbook, Charles Burns v. *United States*, 216 F. 2d 212	66
Jencks v. *United States*, No. 23, this Term	31, 74
Lightfoot v. *United States*, 228 F. 2d 861, No. 32, this Term	33, 52
Little v. *United States*, 93 F. 2d 401	75
Moffat v. *United States*, 232 F. 522	66
Nations v. *United States*, 52 F. 2d 97	66
Polish National Alliance v. *National Labor Relations Board*, 322 U. S. 643	50
Shaughnessy v. *Accardi*, 349 U. S. 280	32, 78
Shaw v. *United States*, 1 F. 2d 199	66
Thiel v. *Southern Pacific Co.*, 328 U. S. 217	68
United States v. *Andolschek*, 142 F. 2d 503	75
United States v. *Bary*, pending on appeal to the Tenth Circuit	57
United States v. *Beekman*, 155 F. 2d 580	75
United States v. *Blumberg*, [redacted]	57
United States v. *Brandt*, pending on appeal to the Sixth Circuit	57
United States v. *Cohen*, 148 F. 2d 94	75
United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U. S. 494	30, 57, 59, 69, 73
United States v. *DeNormand*, 149 F. 2d 622	75
United States v. *Ebeling*, 146 F. 2d 254	75
United States v. *Flynn*, 216 F. 2d 354, certiorari denied, 348 U. S. 909	57, 69, 70
United States v. *Forest*, pending on appeal to the Eighth Circuit	57
United States v. *Frankfeld*, 198 F. 2d 137, certiorari denied, 344 U. S. 922	57
United States v. *Fujimoto*, pending on appeal in the Ninth Circuit	57
United States v. *Grayson*, 166 F. 2d 863	75
United States v. *Huff*, pending on appeal to the Ninth Circuit	57

Cases—Continued

	Page
United States v. *Hutcheson*, 312 U. S. 219	55
United States v. *Krulewitch*, 145 F. 2d 76	75
United States v. *Kuzma*, pending on appeal to the Third Circuit	57
United States v. *Lightfoot*, 228 F. 2d 861, pending on writ of certiorari, No. 32, this Term	57, 78
United States v. *Mesarosh*, 223 F. 2d 449, pending on writ of certiorari, No. 20, this Term	57
United States v. *Noto*, pending on appeal to the Second Circuit	57
United States v. *Rondeau*, 16 Fed. 109	68
United States v. *Silverman*, pending on appeal to the Second Circuit	57
United States v. *Simonds*, 148 F. 2d 177	75
United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150	76
United States v. *Trachtenberg*, pending on appeal to the Second Circuit	57
United States v. *Wellman*, 227 F. 2d 757, pending on petition for writ of certiorari, No. 9 Misc., this Term	57
Universal Milk Bottle Service v. *United States*, 188 F. 2d 959	66
Walker v. *United States*, 93 F. 2d 283	69
Whitney v. *California*, 274 U. S. 357	25, 26, 46, 47
Wright v. *United States*, 165 F. 2d 405	66
Yates, et al. v. *United States*, 225 F. 2d 146, pending on writs of certiorari, Nos. 6, 7, 8, this Term	57

Statutes and Rules:

Communist Control Act of 1954 (50 U. S. C. 841)	32, 77, 78
Internal Security Act of 1950 (50 U. S. C. 783 (f) *et seq.*):	
Section 2	55
Section 4 (a)	27, 51, 54, 56
Section 4 (b)	55
Section 4 (c)	27, 51, 54, 56
Section 4 (f)	27, 51, 54, 55, 56, 77
Section 7	54
Section 8	54
Section 17	55

Statutes and Rules—Continued

	Page
The Smith Act (18 U. S. C. 2385)	2
Section 2 (a) (1)	38
Section 2 (a) (3)	38
Section 3	38
Public Law 766, 84th Congress, 2d Sess., approved June 24, 1956	2
F. R. Crim. P., Rule 12	29
F. R. Crim. P., Rule 17 (c)	74
Notes of Advisory Committee on Rules following Rule 12, p. 2532 in 18 U. S. C	66
28 U. S. C. 1864	29

Miscellaneous:

84 Cong. Rec. 10454	35, 43
96 Cong. Rec. 14190	54
96 Cong. Rec. 14479	54
96 Cong. Rec. 14597	54
96 Cong. Rec. 15198	54
96 Cong. Rec. 15204	54
Foster, William Z., *Twilight of World Capitalism*	15, 61
Foster, William Z., Article in the June 1950 issue of *Political Affairs*	61
H. R. 5832, 80th Cong., 2d sess	53
H. R. 9490, 81st Congress	53
Hearings before House Committee on Un-American Activities on H. Res. 282, 76th Congress, 1st sess., p. 4308	34
Hearings before the House Committee on Un-American Activities Regarding Communist Espionage in the United States Government (1948), pp. 1429–1449	36
Letter, John W. Davis to Senator McCarran, dated February 10, 1950	54
New York Times, February 11, 1950, p. 2	36
New York Times, July 20, 1956, p. 1, and July 21, 1956, p. 1	38
Report of the Canadian Royal Commission	35, 36
S. 2311, 81st Cong	53
S. 4037, 81st Cong., 2d Sess	54
15 State Dept. Bull. 422	35
15 State Dept. Bull. 1057	35

Miscellaneous—Continued

	Page
16 State Dept. Bull. 299	35
16 State Dept. Bull. 496	35
16 State Dept. Bull. 583	35
16 State Dept. Bull. 1215	35
16 State Dept. Bull. 1218	35
17 State Dept. Bull. 38	35
17 State Dept. Bull. 329	35
17 State Dept. Bull. 392	35
17 State Dept. Bull. 411	35
17 State Dept. Bull. 429	35
17 State Dept. Bull. 481	35
17 State Dept. Bull. 531	35
17 State Dept. Bull. 702	35
18 State Dept. Bull. 216	35
18 State Dept. Bull. 304	35
18 State Dept. Bull. 446	35
18 State Dept. Bull. 536	35
19 State Dept. Bull. 447	35
19 State Dept. Bull. 710	35
20 State Dept. Bull. 450	35
20 State Dept. Bull. 556	35
20 State Dept. Bull. 692	35
20 State Dept. Bull. 755	35

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 29

JUNIUS IRVING SCALES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals for the Fourth Circuit (R. 116–133) is reported at 227 F. 2d 581.

JURISDICTION

The judgment of the Court of Appeals was entered on November 7, 1955, and a petition for rehearing was denied on November 17, 1955 (R. 134). By order of the Chief Justice, the time for filing a petition for writ of certiorari was extended to January 6, 1956 (R. 135), and by subsequent order of Mr. Justice Clark the time for such filing was extended to and including January 16, 1956 (R. 135). The petition was filed on January 16, 1956, and granted on March 26, 1956. 350 U. S. 992. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

399753—56——1

QUESTIONS PRESENTED

1. Whether the "membership" clause of the Smith Act (18 U. S. C. 2385) is unconstitutional on its face or as applied to the facts of this case.

2. Whether Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f))—which provides in part that neither "the holding of office nor membership in any Communist organization by any person shall constitute per se a violation" of that or any other criminal statute—modified, amended, or repealed the "membership" clause of the Smith Act so as to render it inapplicable to this case.

3. Whether the evidence was sufficient to support the verdict.

4. Whether petitioner was denied a fair trial because of

(a) the composition of the grand jury which indicted him,

(b) the admission of evidence offered by the prosecution,

(c) the refusal of the trial court to permit petitioner to examine written statements furnished to the Federal Bureau of Investigation by government witnesses, or

(d) the legislative findings of fact concerning the Communist Party as set forth in the Internal Security Act of 1950 (50 U. S. C. 781) and the Communist Control Act of 1954 (50 U. S. C. 841).

STATUTES INVOLVED

The Smith Act (18 U. S. C. 2385), in its form applicable to this case,[1] provides:

[1] The statute has recently been amended by Public Law 766, 84th Congress, 2nd Session, approved June 24, 1956, to provide

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

---

for an increase of the maximum fine from $10,000 to $20,000 and an increase in the maximum sentence from 10 to 20 years. In addition, this most recent amendment reinstated as part of Section 2385 of Title 18 the special conspiracy provision which had been repealed when the Criminal Code was revised in 1948.

The text of the Smith Act, together with relevant provisions of the Constitution of the United States, the Internal Security Act of 1950, the Communist Control Act of 1954, and pertinent statutes concerning the qualifications and the empanelling of jurors (28 U. S. C. 1861, 1864), are set forth in the Appendix to Petitioner's Brief, pp. 47–52.

STATEMENT

On November 18, 1954, in the United States District Court for the Middle District of North Carolina, an indictment was returned against petitioner charging that (1) continuously from about January 1946, and up to and including the date of the filing of the indictment, the Communist Party of the United States was at all times a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit; and (2) throughout that entire period of time the petitioner was a member of the Communist Party with knowledge that it did so teach and advocate, and that he intended to bring about such overthrow of the Government as speedily as circumstances would permit.

After his arrest on November 18, 1954,[2] petitioner first appeared in court on December 7, 1954. His request for a one-week extension for the purpose of securing counsel was granted. On December 16, he

[2] The essential facts which are recited in this and the succeeding three paragraphs are also set forth in the trial judge's "Finding of Fact, Conclusion of Law, and Order" of April 15, 1955, reproduced as Appendix B of this brief, pp. 95–100, *infra*.

again appeared before the court for arraignment, but was still not represented by counsel. The court thereupon appointed two members of the bar to represent petitioner for purposes of the arraignment. On that day, petitioner entered a plea of not guilty, reserving the right to file appropriate motions by January 14, 1955, and specifically reserving his right to challenge the composition and array of the grand jury.

On December 22, 1954, petitioner was released on bail. On January 14, 1955, the date fixed by the court for the filing of appropriate motions, petitioner was represented by a New York attorney who requested sixty additional days in which to file motions. Acting on this request, the court granted an extension to February 18, 1955, by which time the petitioner was to file his motions, and the court fixed April 11, 1955, as the date for the commencement of the trial. Petitioner's counsel announced complete satisfaction with the dates as set.

On February 18, 1955, petitioner, again represented by new counsel of his own choosing, filed motions to dismiss the indictment on constitutional and other grounds, for bill of particulars, for the return of seized property and the suppression of evidence, for discovery and inspection pursuant to Rule 16, for pre-trial inspection of documents under Rule 17 (c), to strike portions of the indictment, and for continuance of trial.

Argument on these motions was heard by the court on March 8, 1955, and at this time petitioner's counsel advised the court of his intention to file a motion cha-

lenging the method of selecting the grand jurors despite the Government's announced intention to object to the filing of such a motion on the ground that it would be untimely. Petitioner subsequently filed the motion together with a challenge attacking the method of selecting the trial jury. On April 1, 1955, the court, reserving to the Government its objection to the motion challenging the grand jury, conducted a hearing on the method of selecting jurors, since the evidence as to each of the two motions was necessarily the same in substance. At the conclusion of the hearing, the court denied the motion attacking the grand jury panel because

> (1) the motion was not timely filed and
>
> (2) the evidence produced at the hearing failed to show that the method of selecting jurors was improper (Motion Tr. 150–153).[3]

The motion challenging the petit jury also was denied.[4]

The trial commenced on April 11, 1955, and the jury returned its verdict of guilty on April 21, 1955. On April 22, 1955, petitioner was sentenced to six

---

[3] "Motion Tr." refers to the typewritten transcript of the hearing held on April 1, 1955, on the pre-trial motion challenging the method of selecting jurors; "R." refers to the printed record; "Tr." refers to the typewritten trial transcript; "Ex." refers to the Government's trial exhibits; and "Def. Ex." refers to the petitioner's trial exhibits.

[4] The trial court observed that a revised list of prospective jurors was being prepared by the jury officials (Motion Tr. 153–154), and when petitioner's counsel agreed that the method of selection of this revised list was satisfactory to him (Motion Tr. 154–164), the court quashed the then existing venire of petit jurors and ordered a new panel drawn under the revised method of selection (Motion Tr. 164), from which the jury which returned the verdict was selected.

years in prison (R. 116). On appeal, the judgment of the lower court was affirmed in all respects (R. 116–133).

The evidence supporting the verdict may be summarized as follows:

COMMUNIST PARTY TENETS AND DISCIPLINE

On the issue of whether the Communist Party taught and advocated the violent overthrow of the government, the testimony of the three government witnesses was closely similar to that received in other Smith Act cases, such as *United States* v. *Dennis*, 183 F. 2d 201 (C. A. 2), affirmed, 341 U. S. 494; *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922; and *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909. In addition, the evidence on this issue was very similar to and in some respects identical with that received in the three companion Smith Act cases which are currently before the Court for argument. To avoid burdening the body of our brief with the extensive and relatively familiar materials on this point, we set forth in an Appendix A (pp. 80–94, *infra*) the evidence in the record to support the jury's finding that the Communist Party of the United States, throughout the entire period of the indictment, was a group which taught and advocated the violent overthrow of the United States Government as speedily as circumstances would permit.

Here we add merely a brief reference to the evidence showing how the Party enforces upon its mem-

bers rigid discipline and adherence to Party doctrine through its principle of "democratic centralism" (Tr. 404). The witness Lautner described this concept of "democratic centralism" as follows (Tr. 404):

> Decisions of the National Committee are binding on all Party members throughout the Communist Party in the United States whether they agree with it or not. They must carry out Party decisions. They can object to it, but they must carry it out and later on they can have a hearing whenever they have a disagreement with a decision along the line. But democratic centralism and Party discipline demand that the Party must have a unity of will to act as one.[5]

At the Walnut Cove School, organized and directed by petitioner for the purpose of "training outstand-

---

[5] In Stalin's *Foundations of Leninism*, pp. 118–119, introduced by the Government as Exhibit 5 (R. 22, 24–25), the doctrine was authoritatively stated as follows:

"The achievement and maintenance of the dictatorship of the proletariat is impossible without a party which is strong by reason of its solidarity and iron discipline. But iron discipline in the Party is inconceivable without unity of will, without complete and absolute unity of action on the part of all members of the Party. This does not mean, of course, that the possibility of contests of opinion within the Party are thereby precluded. On the contrary, iron discipline does not preclude but presupposes criticism and contest of opinion within the Party. Least of all does it mean that discipline must be 'blind.' On the contrary, iron discipline does not preclude but presupposes conscious and voluntary submission, for only conscious discipline can be truly iron discipline. But after a contest of opinion has been closed, after criticism has been exhausted and a decision has been arrived at, unity of will and unity of action of all Party members are the necessary condition without which neither Party unity nor iron discipline in the Party is conceivable."

ing Communists in the Virginia and North and South Carolina Districts" (*infra*, pp. 21–22), the principle of "democratic centralism" was concretely spelled out as follows to government witness Childs:[6]

> Another consideration was that as Communist Party members we were to remember at all times that the Communist Party always comes first. What that means is that members of the family, if you have a member of the family which is rather hostile towards Communism, well, that is relatively too bad because the Communist Party comes first. The individual who desires, if a person wants to work in a particular location or go in a particular location, he must subject himself to the discipline and directives of the Communist Party. In other words it is not up to him. The Communist Party will do all in its power to convince this person that the goal, that the assignment for that particular person, perhaps the person does not agree with the plans, the person does not even want to do it, but the Communist Party says that the Party comes first, that each person's life must be based on the fact that he or that person is serving the Communist Party [R. 86–87].

---

[6] Childs was a confidential informant who reported to the FBI on Party activities in North Carolina from 1948 until 1955, when he appeared as a Government witness in the instant trial (R. 65–96). On December 18, 1949, Childs was introduced to petitioner (Tr. 1019), and thereafter maintained an association with him until August 1953 (R. 95). Childs attended High Point College, North Carolina (Tr. 1012), and at the time of the trial was a student at the University of North Carolina (Tr. 1011).

The extent to which petitioner was imbued with this concept of "democratic centralism" was evidenced by the following statement he made to Government witness Clontz in the year 1949 (R. 39):

> Junius [Scales] explained to me that he was District Chairman of the Communist Party District for the two Carolinas, that the District was an integral part of the Communist Party, U. S. A. Now he explained that actually there was not any visible tie between the Communist Party in all countries, but that the Soviet Union was regarded as the mother country and that the Soviet Union controlled generally the policies handed down by the Communist Party here. He said it was only natural since the Soviet Union was the mother country of the working class that the Soviet Union would support the working classes in other countries throughout the world.

Under this doctrine of "democratic centralism" which compels members to submit without question to the Party's decisions and programs, there is no place in the Party for those who would oppose its program of forceful and violent overthrow of the Government (Ex. 19, R. 28).

PETITIONER'S ROLE AS A PARTY MEMBER AND LEADER IS CONCEDED

With respect to petitioner's membership in the Communist Party there is no issue, he having conceded this point in his opening statement to the jury (Tr. 273) and having acknowledged in his petition for a writ of certiorari that he is publicly known as Chairman of the Communist Party of North Carolina (Pet. 4).

EVIDENCE OF PETITIONER'S KNOWLEDGE OF THE PARTY'S REVOLUTIONARY TEACHINGS AND PURPOSES AND OF HIS INTENT TO ACCOMPLISH THEM AS SPEEDILY AS CIRCUMSTANCES PERMITTED

To establish that petitioner, while a member and officer of the Communist Party, had knowledge that the organization teaches and advocates the overthrow of the Government as speedily as circumstances would permit, and that he had the specific intent to bring about such overthrow, the Government offered extensive evidence. Such evidence established that petitioner maintained close contact with National Party Headquarters in New York (Tr. 690, 1053, R. 69, 92–93); he organized meetings at which high Party functionaries spoke (Tr. 585–588, 613, 670); he received the plaudits of William Z. Foster, National Chairman of the Party, for his work in the Party's behalf in North and South Carolina (Tr. 669–670); he was the Director of a Party school to train outstanding Communists in the Virginia, North and South Carolina Party Districts (R. 71); and he disappeared into the Party underground in December 1951 (R. 56). The evidence is clear, in short, that petitioner was not a minor figure in the Party hierarchy but rather a highly-trained, well-disciplined, articulate teacher of Marxism-Leninism occupying a position of leadership.

The witness Lautner explained that the Communist Party of the United States is divided into Districts, some of which comprise more than one state (R. 27). Petitioner was Chairman of the Communist Party of North Carolina, a state organization of the Party

(R. 95). In each state organization or District, various departments or commissions are set up to permit efficient functioning (R. 27), and it is the duty and responsibility of the State Chairman (in North Carolina, the petitioner) to supervise and guide the activities of these various departments—such as the Educational Committee, Literature Director, Nationality Groups Commission, and so forth (R. 27–28). Under the Party's principle of "iron discipline," it was petitioner's function as State Chairman to implement and carry out in his State the decisions and program as laid down by the National Committee of the Party.[7]

The evidence also showed that petitioner was completely familiar with substantially all of the basic Marxist-Leninist classics, which were introduced by the Government to show the revolutionary purposes of the Communist Party. Specifically, his direct knowledge of the following texts was demonstrated:

> *Communist Manifesto* (Ex. 1, Tr. 664); ***Foundations of Leninism*** (Ex. 5, R. 44); *Problems of Leninism* (Ex. 6, Tr. 1034); *State and Revolution* (Ex. 7, R. 36, Tr. 1055, 1058); *Left Wing Communism* (Ex. 8, Tr. 1017, 1020, 1127); *Imperialism* (Ex. 10, Tr. 1055, 1057); *History of the Communist Party of the Soviet Union (Bolshevik)* (Ex. 12, Tr. 664–665); *Strategy and Tactics of the Proletarian Revolution* (Ex. 13, Tr. 1021).

In addition to evidence of his familiarity with these "classics" of Marxism-Leninism, there was a variety of direct evidence, consisting of petitioner's own state-

[7] It will be recalled that the defendants in the *Dennis* case were members of the National Committee of the Party.

ments, to show his knowledge of the Party's violent revolutionary purposes.

Petitioner's endorsement of the Communist Party's revolutionary program, as well as his recruiting activity, was demonstrated in his tutoring of the witness Clontz in an effort to mold him into a valuable, well-indoctrinated member of the Party. In 1948 Clontz was a law student at Duke University (R. 32). After a conference with an agent of the Federal Bureau of Investigation, Clontz sent a postcard to petitioner in September 1948 expressing an interest in Communism (R. 31–32).

In response to the postcard, Clontz received from petitioner a carton of Communist literature and a letter advising:

> * * * If I can discuss any matter relating to my party and its program with you in person, I will be glad to do so [R. 32–33].

Petitioner promptly commenced to implement this program by furnishing Clontz with copies of *Problems of Leninism* and *State and Revolution* (Exs. 26 and 25; R. 36), both of which delineate the basic aims and objectives of the Party (Tr. 581–583), and advising him to study them in order "to learn more about his Communist Party and to learn the principles of * * * Marxism-Leninism" (R. 37).

Referring to a meeting held with petitioner just before Christmas of 1948, Clontz testified (R. 35):

> [T]hen I posed to Scales the question, * * * if Communism is the better form of government and the better way of life, why can't we bring Communism here to the United States by

educating the people, by showing them that this is the best form of government?

Scales answered me that that was entirely fallacious, that that would never work, that in the first place the Government of the United States owned all the media of communication, the newspapers, * * * they controlled the schools, the other institutions of government and that they would not permit the masses of people to learn the truth about this Communism, that in order to get the truth to the people you would first have to destroy the government and destroy the mediums of communication, control and destroy the institutions of Government, that Stalin and his followers had proved conclusively that ideas alone would never change the form of government or would never do anything. He said that it would be nice if revolution happened automatically but, he said that unfortunately they didn't, that a small militant force had to bring about a change in government by revolution.

I recall he said that that is where we, the Communist Party, come in. He said that Engels, the philosopher of some kind, that collaborated with Karl Marx, had felt that when the revolution comes about, Government would just disintegrate and the people would just sort of run things very loosely. He said that Lenin had proved that that didn't follow, that when the revolution took place in the Soviet Union in Russia, that Lenin had taken the police power, that the Czar had used that police power to consolidate his position and as Junius put it, to protect the masses of the people from the encroachment of the foreign capitalist coun-

tries that would try to come in and prevent the revolution.

Scales said, and it made quite an impression on me, that force is the only answer, that ideas alone can never accomplish anything.

At subsequent meetings with Clontz during 1949, petitioner continued to supply him with Communist literature (R. 37), and, in giving him an autographed copy of William Z. Foster's *Twilight of World Capitalism*, pointed out that in the dedication Foster had said "his great grandson * * * would live in a Communist United States of America" (R. 37).

On numerous occasions during this period, petitioner discussed with Clontz the basic strategy of the Party for bringing about a violent revolution (R. 38–39), describing the forces that would be utilized as follows:

> * * * that the Communist Party was the natural leader of the working class, and that the Communist Party must lead the unions in their efforts. He said the big difference in the Communist Party and a union is that a union just saw the next hill, whereas the Communist Party knew the over-all goal which was a Communist United States, and, therefore, had more foresight and could direct activities more, so there was a definite program of * * * participation in union affairs by the Communist Party.
>
> The second force that he said they would use was that of the Negro nation. Now Communists defined the Negroes in the South, what they call the black belt, as a separate nation all their own * * * that there was the eternal

> struggle between the working class and the Negroes and the blood-sucking capitalist, monopolist. He said that they were oppressing the Negro people in the South and all over the United States and that the Communist Party was going to use these two forces to bring about the revolution guided by the Communist Party as the vanguard.

Petitioner later predicted to Clontz when the revolution would take place (R. 41):

> He commented that in July of 1917, the Czar had driven the Communist Party of Russia underground and had outlawed them. He said that the very next October the Communist Party, the Bolsheviks, had managed to bring about the revolution. Scales said he saw a perfect analogy here in this country. He said that as soon as the capitalists drive us underground, there will be a revolution. He said that if a depression came along that would accelerate it still further and would make the job easier.

In January 1950, Clontz was directed by petitioner to attend a meeting of the Karl Marx Study Club, a student organization run by Communists at the University of North Carolina to hear an address by Herbert Aptheker, a high Party functionary, whom petitioner had arranged to bring down from New York (Tr. 613). Aptheker told the group that "a revolution in the United States was a certainty, and a necessity" and would be modeled on the "revolution that took place in Russia" (R. 42). Discussing this meeting with Clontz a few days later, petitioner stated

that Aptheker's speech was "one of the clearest statements of Marxist teachings that we would find" (R. 42).

On January 17, 1950, Clontz was officially received into the Communist Party by petitioner as a secret member at large for security reasons (Ex. 29; R. 43). Petitioner advised Clontz that he would continue to tutor him personally in the principles of Communism to help him "be a better member of the Communist Party" He instructed Clontz to continue in his studies of Marx and Lenin and gave him a study outline based on the book *Foundations of Leninism*[8] (Ex. 5), which he said he personally had prepared (Ex. 30; R. 44). Petitioner told Clontz to use the outline he had prepared as a guide to help him in his study of *Foundations of Leninism* (R. 44). Among the questions contained in this outline are the following:

> 3. Stalin outlined the "Three Theses of the Proletarian Revolution" twenty-five years ago. Does it sound as true now as it did then? How?
>
> 4. How does a bourgeois-democratic revolution become a socialist revolution?
>
> 5. What conditions have to exist in a country before there can be a successful revolution?

In subsequent discussions he had with Clontz, petitioner spelled out the answers to these questions (R. 48–51). In February or March 1950, after petitioner and Clontz had read a passage from Stalin's *Problems*

[8] On a later occasion, petitioner told Clontz that *Foundations of Leninism* (Ex. 5) was "the text and 'Bible' for living and fighting for present day Communists" (R. 48).

of Leninism,[9] petitioner pointed out to Clontz that this passage "showed the inevitability of the revolution, that obviously you could not effect a change in government without a violent revolution" (R. 49). Scales then reiterated his feelings that "a revolution would come in this country much more easily than it had in the Soviet Union" (*ibid.*).

On another occasion during the Spring of 1950, Clontz testified, Scales "brought up the question of permanent revolution. Permanent revolution was defined by Scales as the concept that the Soviet Union and the Communist Party in the Soviet Union were not through with their job after they had achieved Socialism. In the Soviet Union they had continuing obligations. He said that when the Soviet Union's Communist Party had brought about a revolution * * * they were still obligated under Stalin's teachings and under common sense * * * to continue assisting the Communist Party all over the world until they had overthrown the capitalist governments, including that of the United States, that would threaten Communists, Communism and Socialism, unless they were overthrown" (R. 49–50). Clontz then asked petitioner whether this meant that when the day of revolution comes, the Soviet Union would land troops. Peti-

[9] "Can such a radical transformation of the old Bourgeois order be achieved without a violent revolution, without the dictatorship of the Proletariat? Obviously not. To think that such a revolution can be carried out peacefully within the framework of the Bourgeois democracy which is adapted to the rule of the Bourgeoisie, means that one has either gone out of one's mind and lost the normal human understanding, or, has grossly and openly repudiated the Proletarian revolution." *Problems of Leninism*, J. Stalin, p. 131 (Ex. 26; R. 49).

tioner replied that "as a practical matter * * * the Soviet Union would not land troops at the commencement of the revolution, that the Communists here would have to start the revolution themselves" (R. 50).

In June 1950, petitioner made arrangements for Clontz to attend the Jefferson School of Social Science which he described "as a school sponsored by the Communist Party in New York for Party members from all over the country * * * that were deemed to be good potential Party material" (R. 51). Clontz was also told that petitioner would have to certify him as a good Communist before his application was acted on and that he would have to adopt an alias (R. 51).[10] On August 5, 1950, Clontz left for New York to begin his courses, which lasted approximately three weeks (R. 52). The third week was spent in private tutoring by Doxey Wilkerson, the Director of Curriculum, whose job was to see that the teachings of the Jefferson School reflected the Communist Party line as laid down by the Party in the National Headquarters (R. 53; Tr. 662–663). Among the texts used in this course were the *Communist Manifesto* (Ex. 1; Tr. 664) and *History of the Communist Party of the Soviet Union* (Ex. 12; Tr. 663–664). On his return from New York, Clontz discussed in detail the teachings of the Jefferson School with petitioner and Henry Farash, the Party Organizer in the North Carolina District (Tr. 661, 668). At the same time, petitioner and Farash discussed Clontz's future Party assignments with him and it was decided, since maximum se-

[10] Clontz used the name Ralph Clayton while attending this school (R. 52).

curity had been ordered in effect by the National Communist Party Headquarters (Tr. 666), that Clontz would remain as a secret Party member and would study and "assist them in their Front activities and otherwise prepare myself for duty when the revolution came" (Tr. 667).[11]

In the latter part of 1951, petitioner found it necessary to curtail his open Party activities, advising Clontz that he was going underground (R. 56),[12] but he remained Chairman of the Carolina District of the Communist Party up to and through his trial and conviction.

While Clontz ceased his contact with petitioner in December, 1951, the witness Childs continued his association with him until late in the summer of 1953 (R. 94). In the summer of 1952, when Childs told petitioner that he was planning to quit his job and return to school, petitioner explained that the Communist Party program during this period was industrial concentration and that it was Childs' duty as a Communist Party member to remain in industry since the Party considered the trade unions to be "schools of the revolution" (Tr. 1062).[13] On this same

[11] At this meeting petitioner displayed a letter he had received from William Z. Foster, National Communist Party Chairman, congratulating him on his work in the Carolinas, particularly on the 1950 Communist Party Convention (Tr. 669–670).

[12] Petitioner told Clontz that "the Party was like an iceberg * * * a very small amount left visible on top and a vast underground network underneath" (R. 55).

[13] "We must * * * agree to any sacrifice, and even—if need be—to resort to all sorts of stratagems, artifices, illegal methods, to evasions and subterfuges, only so as to get into the trade unions, to remain in them, and to carry on Communist work within them at all costs." Lenin, *Left Wing Communism*, p. 38 (Ex. 8).

occasion, petitioner told Childs that if Party members left industry and went back to school then they "would have to sit back and wait for the Red Army to liberate them" (R. 67).

In August 1952, Childs was selected by petitioner to attend a school set up by him "to give special training to outstanding Communist Party people in Virginia, North and South Carolina Districts" (R. 67, 71). This school was held under strict security precautions in a remote wooded area adjoining the farm of a Party member in Walnut Cove (R. 67–70). Childs was instructed by petitioner to bring with him copies of *History of the Communist Party of the Soviet Union* (Ex. 12) and *Ten Classics of Marxism* (Ex. 41).[14] The students were assigned readings in the Marxist-Leninist "classics" which were later discussed by the group (Tr. 1078, *et seq.*). On one occasion the group discussed suggestions on how to "Bolshevize" the Communist Party (R. 85). On this subject the proposition was stressed that the works of Marx, Lenin and Stalin are the basic theory on which all decisions in the Party are made (R. 86), and that members should engage in self-study of the classical works of Marx, Lenin and Stalin to develop an understanding of the relationship between the theory of the Communist Party which was studied and its application in their personal work (R. 88). Illustrative of this, it was pointed out to the students that although the Party line for public consumption—*e. g.*,

[14] *Ten Classics of Marxism* is a compilation of Party texts including the following: *Communist Manifesto* (Ex. 1); *Foundations of Leninism* (Ex. 5); *State and Revolution* (Ex. 7); *Left Wing Communism* (Ex. 8); *Imperialism* (Ex. 10).

belief in peace—may change as the situation demands, the ultimate goal of the Party as embodied in the works of Marx, Lenin and Stalin always remains the overthrow of the Government by force and violence (R. 87–88).

A highlight of this school was a demonstration in petitioner's presence by the Communist Party's District Organizer for the State of Virginia—a member of the school staff, along with petitioner—in which he explained to the students that if it became necessary to kill a man in a picket line, this could be accomplished by the use of a wooden pencil which could be thrust through the individual's chest or throat (R. 93–94).

Petitioner's own views on the subject of violence were again expressed in his comment to Childs, on an occasion when Childs showed him a book distributed by the Western Electric Company entitled *Our Own Communists Can Cripple Us*, that "we should keep the names of these people and shoot them some day" (R. 67).

Petitioner, in April 1953, explained at a Party meeting attended by Childs that "the purpose of the Communist Party Club was not only for the Bourgeois democratic revolution, but was for the ultimate Socialist revolution" (R. 94).[15]

---

[15] In *Problems of Leninism* (Ex. 26), which petitioner recommended to Childs (R. 94), Stalin points out (pp. 11–17) that the main difference between "Bourgeois democratic revolution" and "Socialist revolution" is that the proletarian (Socialist) revolution cannot avoid destroying the old state machine and replacing it by a new one.

Both the witnesses Clontz and Childs testified that during the period of their association with petitioner and while they were members of the Communist Party, the principles taught them by petitioner as the basic aims and objectives of the Communist Party were never changed or repudiated (R. 56–57, 95).

SUMMARY OF ARGUMENT

I

The membership clause of the Smith Act is valid on its face and as applied in this case.

A. *Dennis* v. *United States,* 341 U. S. 494, substantially answers the argument that the membership provision is unconstitutional on its face. Here, as in *Dennis*, the evil with which Congress dealt is not mere speech—discussion and intellectual attempts to persuade—but action in concert with "a group aiming at [the Government's] *overthrow*" by "attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit * * *." 341 U. S. at 509 (emphasis added). As in *Dennis,* the problem is actually one of preparation by the Party to overthrow the Government by force "when they thought the time was ripe." *Id.* at 510.

The familiar history which was before the Court there—and see Mr. Justice Jackson's concurring opinion in *American Communications Assn.* v. *Douds,* 339 U. S. 382, 422 *et seq.*—gave solid ground for the judgment of Congress in 1940 that Communist, Nazi, and Fascist organizations were dedicated to principles of force and violence. The years since 1940 have con-

firmed that judgment. The experience of countries like Czechoslovakia and Poland has tragically demonstrated how minority groups like these, by tactics of infiltration and with the aid of their foreign alliances, can destroy free institutions with a coup when the time is ripe. There has been powerful evidence of Communist Party espionage in this and other countries on behalf of a foreign power. And this threat has been seen to be potent and grave in a time when the constant possibility of lightning war calls for daily vigilance against national disaster, including the wreckage which could be effected by even a small group which seeks to occupy strategic places and which pledges its loyalty to a potential enemy. These harsh realities, sustaining the portion of the Smith Act involved in *Dennis*, equally sustain the portion involved here. For although the charge in *Dennis* was "conspiracy" and the charge here is membership, the danger and the power of Congress to meet it are essentially the same.

1. Like the provisions involved in *Dennis*, the membership clause does not expressly state the element of intent required for conviction. As in *Dennis*, however, it is none the less true "that the statute requires as an essential element of the crime proof of the intent of those who are charged with its violation to overthrow the Government by force and violence." 341 U. S. at 499. In *Dennis*, this conclusion followed from the familiar principles that (1) the task of judicial construction is to save, not to destroy, and (2) "existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-Amer-

ican criminal jurisprudence." *Id.* at 500. These principles apply here. There is no merit in petitioner's claim that the Court should refuse to hold intent to be an element of the crime and thereby create a constitutional difficulty.

2. In his effort to show a constitutional difference between the "conspiracy" problem in *Dennis* and the "membership" problem here, petitioner would have membership in the Communist Party or similar totalitarian organizations viewed as a merely passive status, devoid of any action or concert with others. But we deal here with membership in a rigidly indoctrinated and severely disciplined group dedicated to the violent overthrow of the Government—membership coupled with knowledge of the group's purposes and intent to achieve them. As the Court recognized in *Dennis* (p. 511), "rigidly disciplined members subject to call when the leaders" find the time has come comprise the obviously essential sinews of the threat against which the Smith Act is directed. Dealing with such knowing members who aim for the Party's unlawful goals, the membership clause neither covers nor threatens passive dupes or innocents who lack the requisite knowledge or intent.

The rule of the *Dennis* case does not rest, of course, on some special constitutional principle confined to crimes technically designated as "conspiracies." And the fact is that, at least so far as the Constitution is concerned, the combination denounced by the membership clause "partakes of the nature of a criminal conspiracy." *Whitney* v. *California*, 274 U. S. 357,

371–372; see *American Communications Assn.* v. *Douds, supra,* at 432 (Mr. Justice Jackson, concurring). Even the important concurring opinion of Justices Brandeis and Holmes in *Whitney* shows that such a statute is not void on its face.

3. The same reasoning disposes of the claim that the membership clause imposes "guilt by association" and is therefore void. The crime punished is not mere "association." It consists in the individual's personal participation in a combination aimed at forceful revolution with knowledge of this end and intent to reach it. The liability is personal, not vicarious. It is for conduct, not mere status. It stands on the same constitutional footing as the conduct held punishable in *Dennis.*

B. If, as we believe, petitioner fails to show that the membership provision should be held void on its face, he certainly fails to show its invalidity as applied to him. It was proved overwhelmingly that the Communist Party teaches and advocates overthrow of the Government by force and violence, that petitioner knew this, and that he personally intended the accomplishment of that objective. Petitioner was shown to be a Party leader in a significant area, teaching and advocating its doctrines and working for their implementation. The fact that he alone could not overthrow the Government does not immunize him. The same was true of the *Dennis* defendants at the time they were convicted. The Party exists and acts only through its leaders and members who will act when the time is ripe. Congress could strike

at the danger the Party poses in the only way it could be reached—through these leaders and members.

II

Section 4 (f) of the Internal Security Act provides that membership in a Communist organization shall not constitute "per se" a violation of any criminal statute. But this does not afford the immunity petitioner claims from prosecution under the Smith Act. He was not indicted or convicted for membership "per se" but for membership coupled with knowledge of the Party's purposes and intent to achieve them.

Failing to find the asserted exemption in the statutory language, petitioner fails equally when he seeks it in what he describes as "logic and legislative history" (Pet. Br. 32). The history only confirms that Congress exempted "membership * * * per se" and nothing more. Indeed, the history shows that Congress was particularly concerned with the Communist Party and in no mood to grant its members any immunity beyond that deemed absolutely necessary for purposes of the Internal Security Act. It fully satisfies the asserted demands of logic to conclude that Congress did only what the language it wrote says—that it exempted only "membership * * * per se." Sections 4 (a) and 4 (c) of the Internal Security Act—covered like the Smith Act, by this exemption—are similarly not aimed at membership per se. In each instance, the exemption functions perfectly well as an aid to interpretation, making certain that mere membership without more is not to be declared criminal.

399753—56——3

III

The evidence sustains the verdict.

A. Every court and jury which has considered the question under the Smith Act has concluded that the Communist Party teaches and advocates the overthrow of the Government by force and violence. Closely similar to the evidence in prior cases, the evidence here fully justified the jury and the two courts below in reaching the same conclusion.

B. The evidence was equally clear and sufficient to prove petitioner's unlawful knowledge and intent. Petitioner acknowledges that he was the Party leader in the Carolinas. This alone goes a long way to prove his knowledge of what the Party was about. In addition, however, there was extensive evidence specifically detailing petitioner's own acts and declarations. These revealed clearly his knowledge and endorsement of the Party's objectives.

The same evidence plainly authorized, if it did not compel, the jury's determination that petitioner personally intended the realization of these objectives. He led the Party in the Carolinas; he taught its doctrines and recruited members; he worked openly and then underground in the Party's cause. It is possibly imaginable that a person could bend all his efforts this way toward a specific goal without intending to reach it. But the jury was certainly free to conclude beyond a reasonable doubt that no such hypothetical divergence between conduct and intent existed here.

IV

A. Petitioner's motion attacking the indictment because of the composition of the grand jury was properly rejected because (1) it came much too late and (2) it was insufficient on its merits.

1. Such a motion must be made before the plea is entered or "within a reasonable time thereafter" when allowed by the trial judge. Failure to present the motion within the prescribed time constitutes a waiver. Rule 12, F. R. Crim. P. Petitioner was given extensions totaling 64 days after his plea in which to present his numerous pre-trial motions. The motion here in question was not made until more than two weeks after the expiration of these ample extensions. There was no suggestion of a reason, and there is none now, for the delay. These circumstances fully warranted the decision that the motion must be denied as untimely.

2. In any event, petitioner's attack on the grand jury which indicted him presents no basis for reversal. Petitioner is mistaken when he claims that 28 U. S. C. 1864 was violated in that the Jury Commission could not have known that there were 300 names of qualified persons in the box when the panel here involved was drawn. The testimony on this issue showed that there were about 500 names in the box; that the Deputy Clerk knew personally the background and status of practically all persons whose names were in the box; and that the group constituted a fair cross-section of the community drawn without prejudice or discrimination. The fact that names of prospective jurors were solicited from community leaders and organiza-

tions does not vitiate the Jury Commission's action or the indictment. This was not a case like *Glasser* v. *United States*, 315 U. S. 60, where the defect was solicitation of names from a single organization and a consequently improper weighting of the list. See *Dow* v. *Carnegie-Illinois Steel Corporation*, 224 F. 2d 414, 427 (C. A. 3); *United States* v. *Dennis*, 183 F. 2d 201, 218 (C. A. 2), affirmed, 341 U. S. 494.

It should be noted, finally, that the method of selection in the district here involved has been changed so as to correct the asserted deficiencies of which petitioner complains. This fact, coupled with the tardiness of the objection and the utter absence of prejudice, makes this a singularly inappropriate case for invoking the supervisory powers of this Court.

B. Evidence petitioner attacks as inadmissible was relevant and otherwise competent. Evidence of the Party's teachings on the so-called "Negro question" and the Korean conflict helped to piece out the patterns of the Party's unlawful doctrines. The evidence of a demonstration at a Party school showing a technique for murder on a picket line related directly to petitioner, who conducted the school and was present during this incident.

Petitioner is on equally weak ground when he complains that the testimony of the witnesses Lautner and Clontz included references to acts and declarations of others when petitioner was not present. The evidence in question all bore on the Communist Party's teachings, a material issue in the case. Lautner testified as an expert on Party doctrine, a subject on which he was well qualified by a long career as a

Party leader. Clontz, a disciple of the petitioner, told of teachings at Party schools to which petitioner sent him and of other items of doctrine discussed with and explained by petitioner. The material question of what the Party stood for could only be explored in this way—by showing what the leaders and members said and did.

C. Two of the witnesses, Clontz and Childs, had made written reports to the F. B. I. concerning the matters to which they testified. Though petitioner laid no foundation for a belief that there was any inconsistency between the reports and the trial testimony, the trial court, at petitioner's instance, inspected the reports for itself and sealed them as part of the record which is here. Finding no inconsistencies and no omissions, the court denied the motion by which petitioner's counsel sought inspection of the reports for himself. The governing principles are reviewed in the Government's brief in *Jencks* v. *United States,* No. 23, this Term, Point I. As we show there, the production of documents is a matter as to which a "large discretion must be allowed the trial judge * * *." *Goldman* v. *United States,* 316 U. S. 129, 132. Petitioner was probably given more than he could demand as of right when the trial judge examined the reports despite the failure of petitioner to lay any foundation therefor. There was certainly no abuse of discretion in rejecting the demand for inspection by petitioner himself.

D. Petitioner argues, finally, that he must be presumed to have been denied a fair trial because Congress, in the Internal Security Act of 1950 and the

Communist Control Act of 1954, made findings that the Communist Party aims at violent overthrow of the Government. Because of these legislative findings, it is said, the jury must necessarily be deemed to have been incapable of following the instructions which required that it determine the nature of the Communist Party for itself.

Apart from the fact that the argument is improperly made for the first time in this Court, it lacks merit. There was no evidence of the bias petitioner would have the Court presume as a matter of law. It was not shown either that the jurors actually knew of the legislative findings in question or were influenced by them if they did. Petitioner's theory would invalidate every conviction under the Smith Act. But the theory, which attacks the verdict on premises inconsistent with the jury system itself, is unacceptable. The suggested possibility of bias could certainly have been explored; it is not a matter to be presumed without proof. Compare *Accardi* v. *Shaughnessy*, 347 U. S. 260, with *Shaughnessy* v. *Accardi*, 349 U. S. 280.

ARGUMENT

I

THE MEMBERSHIP CLAUSE OF THE SMITH ACT IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED TO THE FACTS OF THIS CASE

We recognize, with the petitioner (Pet. Br. 13), that constitutional issues are to be reached last, not first. However, petitioner begins his argument with the Constitution, and we accept his arrangement of points for the convenience of the Court and the parties. We sub-

mit that this case and the companion *Lightfoot* case (No. 32) are substantially controlled on the constitutional issues by *Dennis* v. *United States*, 341 U. S. 494, and that petitioners have necessarily failed in their effort to show that, while Congress could punish conspiracy to organize the Communist apparatus, it was powerless to proscribe knowing, purposive, active—and, here, high-level—membership from which alone the apparatus derives its power to work for violent revolution.

A. *Validity of the clause on its face*

Reviewed at length in *Dennis*, and long familiar to the Court in any event (see, *e. g.*, Mr. Justice Jackson's opinion in *American Communications Assn.* v. *Douds*, 339 U. S. 382, 422 *et seq.*), the extensive knowledge of totalitarian threats on which Congress has acted scarcely requires lengthy rehearsal here. As the Court knows and everyone knows, it was clear by 1940, when Congress wrote the Smith Act, that the Communist, Nazi, and Fascist movements, armed with modern techniques of subversion and infiltration, posed grave threats to democratic governments the world over. To focus only on the Communist Party, which is involved here, Congress had before it voluminous evidence that the Party's members had at least divided loyalties,[16] and that the Party was under the firm, direct control of the Communist Interna-

[16] See for example the testimony of William Z. Foster, Chairman of the Communist Party of the United States before the House of Representatives Special Committee To Investigate Communist Activities in the United States, 1930–1931, in which Foster stated that the "more advanced workers" in this

tional, and, through it, of the Soviet Union." From the testimony of Earl Browder and Benjamin Gitlow and from a great mass of documentary evidence, Congress could reasonably conclude that both the Communist International and the Communist Party of the United States were devoted jointly to a program of establishing socialism through the medium of violent revolution."

---

country look upon the Soviet Union as "their country" (Hearings, Part I, Volume 4, pp. 384, 385).

The evidence in this case makes it clear that this situation was not limited to the 1920's and 1930's. In about 1949 petitioner told the witness Clontz that, although there was no visible tie between Communist Parties of the various countries, the Soviet Union was regarded by Communist Party members as the "mother country" and that "the Soviet Union controlled generally the policies handed down by the Communist Party here" (R. 39).

[17] Hearings before House Committee on Un-American Activities on H. Res. 282, 76th Congress, 1st Sess., pp. 4308–4311, 4432, 4671.

[18] See, *e. g.*, the statement of Representative McCormack of Massachusetts:

"* * * We all know that the Communist movement has as its ultimate objective the overthrow of government by force and violence or by any means, legal or illegal, or a combination of both. That testimony was indisputably produced before the special committee of which I was chairman, and came from the lips not of those who gave hearsay testimony, but of the actual records of the Communist Party of the United States, presented to our committee by the executive secretary of the Communist Party and the leader of the Communist Party in the United States, Earl Browder. That was the testimony, the best evidence presented to our committee at that time, that such is the objective of the Communist Party. Therefore, a Communist is one who intends knowingly or willfully to participate in any actions, legal or illegal, or a combination of both, that will bring about the ultimate overthrow of our Government. He is the one we are aiming at, and the Government should have the

Events following 1940, both prior to and since the *Dennis* decision, have served to make the Communist threat clearer and more serious and to confirm the judgment on which Congress proceeded in the Smith Act. Immediately following the collapse of Nazi Germany, Soviet troops occupied Poland, Czechoslovakia, Hungary, Bulgaria and Rumania. In each of these countries new governments were established consisting of a coalition of parties, and in each of these countries the Communists were a minority party. In each case the Communists secured control of the Ministry of the Interior—control of the police—and gradually assumed power through the oppressive use of the police and pressure exerted by the Soviet Union.[19]

Recent history demonstrates also that the Communist Parties in various countries have provided an extensive network of espionage on behalf of the Soviet Union. Canada discovered the existence of a Soviet espionage ring in 1946,[20] Australia in 1954, when

---

burden of proving that a person 'knowingly or wilfully' advocates the overthrow of government and is 'knowingly or wilfully' a member of an organization that believes in the ultimate overthrow of our Government." [84 Cong. Rec. 10454.]

[19] Poland—15 State Dept. Bull. 422; 16 State Dept. Bull. 299.

Rumania—15 State Dept. Bull. 1057; 17 State Dept. Bull. 38, 329, 995; 18 State Dept. Bull. 216; 20 State Dept. Bull. 450, 692, 755.

Hungary—16 State Dept. Bull. 495, 583, 1215; 17 State Dept. Bull. 392, 411; 20 State Dept. Bull. 450, 556, 692, 697, 755.

Bulgaria—16 State Dept. Bull. 1218; 17 State Dept. Bull. 429, 481, 531, 702; 19 State Dept. Bull. 447, 710; 20 State Dept. Bull. 450, 556, 692, 755.

Czechoslovakia—18 State Dept. Bull. 304, 446, 536.

[20] *Report of the Canadian Royal Commission*, which was issued after a thorough investigation by a commission of two Canadian Supreme Court Justices.

Vladimir Mikhailovich Petrov left the service of the Soviet Union and was granted political asylum in Australia."[31] That a similar network of espionage has existed in the United States and elsewhere seems unquestionable from the testimony of such persons as Whittaker Chambers[32] and Elizabeth Bentley,[33] from the case of Klaus Fuchs in England,[34] and from the *Rosenberg* espionage trial in this country.

In a word, contemporary history compellingly supports the opinion of Mr. Justice Jackson in *American Communications Assn.* v. *Douds*, 339 U. S. at 425, when he said:

> The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. * * * Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal. It would be incredible naivete to expect the American branch of this movement to forego the only methods by which a Communist Party has anywhere come into power. In not one of the countries it now dominates was the Communist Party chosen by a free or contestible election; in not one can it be evicted by any election. The international police state has crept over Eastern Europe by deception, coercion,

---

[31] *Report of the Royal Commission on Espionage* of the Commonwealth of Australia, published in 1955.

[32] Hearings before the House Committee on Un-American Activities Regarding Communist Espionage in the United States Government (1948), pp. 1429–1449.

[33] Hearings, *supra* fn. 22, pp. 503–562.

[34] The text of Fuchs' confession is partially reproduced in the New York Times for February 11, 1950, p. 2.

> coup d'etat, terrorism and assassination. Not only has it overpowered its critics and opponents, it has usually liquidated them. The American Communist Party has copied the organizational structure and its leaders have been schooled in the same technique and from the same tutors.

The familiar dangers with which Congress, in enacting the Smith Act, concerned itself become greatly magnified in times of grave national crises. The serious threat under which free nations of the world must live today is, through force of necessity, receiving more and more recognition. For the past two years, the Executive Branch of the Government has conducted nation-wide Civil Defense exercises to help insure the country's preparedness in the event of a hostile attack. On July 20 of this year the second Operation Alert was held.

Following a mock hydrogen bomb attack, the test was carried out on the assumption that planes had dropped bombs and submarines had fired guided missiles on targets consisting of sixty-three cities, nine air bases, and four Atomic Energy installations. In the New York City area alone it was assumed, for purposes of the test, that five imaginary one-megaton bombs were dropped, inflicting about six million casualties. Ten thousand key operating personnel were required to evacuate Government departments in Washington and travel to sixty-five relocation centers.[22]

---

[22] *The New York Times*, July 20, 1956, p. 1, and July 21, 1956, p. 1.

It requires no lively imagination to comprehend the danger that would be presented to the national security in such a time of disaster by an organization consisting of thousands of highly disciplined, tightly organized adherents whose doctrines are ideologically attuned to the aggressor nation and who have been located in key positions for revolutionary purposes. And so the danger to which Congress and the Executive have found need to address themselves must be and has been appraised in terms of the lightning speed of modern warfare. Doctrines of infiltration into strategic places and readiness to aid a foreign power's assaults, familiar and central features of the Communist program, cannot be weighed on outmoded assumptions which consider only the threat of the Party by itself in a "normal" world. The threat is not the less real, large, or potentially disastrous for the fact that no one can predict for sure when or if the preparation will eventuate in a direct and violent assault on our security and institutions.

Recognizing the solid factual basis on which Congress acted (see, *e. g.*, 341 U. S. at 510–11), this Court, in *Dennis*, concluded (p. 516) "that §§ 2 (a) (1), 2 (a) (3) and 3 of the Smith Act do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights * * *." That conclusion and the premises on which it rests govern this case. To be sure, we are concerned here specifically with the membership provision whereas the convictions in *Dennis* were for conspiracy (1) to organize the Communist Party as a group of persons who teach and advocate overthrow of the Government by force and violence,

and (2) knowingly and willfully to advocate and teach the duty and necessity of such overthrow. 341 U. S. at 497. And so the petitioners here and in *Lightfoot* have undertaken to show that, though Congress could strike at the Communist conspiracy in its inception, it lacks power to reach the forged weapon by punishing those who constitute it when they become and remain members of the Party, knowing its purposes, intending their achievement as speedily as possible, and supplying in this way the force by which such achievement is sought. For this view, the petitioners in the two cases argue variously that (1) no requirement of personal intent may be found in the membership clause though such intent was found to be a requisite in the *Dennis* provisions, and this lack invalidates the statute (Scales Br. 17; Lightfoot Br. 45–48); (2) that there is a constitutional difference between the evil of the conspiracy in *Dennis* and the evil of the membership involved here, because the individual as a member lacks the strength and may lack the intent to overthrow the Government (Scales Br. 18–22); and (3) that the membership clause punishes mere association and imposes "guilt by association" (Scales Br. 25–26; Lightfoot Br. 48–54). These arguments, largely ignoring the factual realities which concerned Congress and are revealed in the records here, fail utterly to warrant the proposed constitutional distinction between these cases and *Dennis*.

1. As in the portions of the Act considered in *Dennis*, the membership clause does not state expressly the requirement of personal intent. In *Dennis*, fol-

lowing the familiar principle that judicial construction of statutes should save rather than destroy, it was held "that the statute requires as an essential element of the crime proof of the intent of those who are charged with its violation to overthrow the Government by force and violence." 341 U. S. at 499. It was recalled there that [t]he existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." *Id.* at 500. That ruling, with its salutary reasons, is squarely apposite here.

Directly contrary to this Court's reminder "that it is the duty of the federal courts to interpret federal legislation in a manner not inconsistent with the demands of the Constitution" (*Dennis*, 341 U. S. at 501), the petitioners here insist that, in contrast to *Dennis*, "intent should not be read by implication" (Scales Br. 17; Lightfoot Br. 48) into the membership clause. The effort, we think, has been sufficiently refuted. The principles of constitutional adjudication and criminal jurisprudence which required intent as an element in *Dennis* require it no less here. It is no answer to suggest, in a perverse insistence on finding constitutional infirmities, that conspiring to organize the Party and teach and advocate its unlawful objectives (*Dennis*) necessarily entails intent to achieve these objectives, while membership in the Party does not (Scales Br. 22; Lightfoot Br. 47). At most, the suggestion could mean that in imaginable cases, not the ones here, membership might be proved without showing the requisite intent. It by no means follows that the courts should strain after con-

stitutional difficulty by rejecting the natural conclusion that intent is an element of the crime the statute denounces.

2. Pervading the constitutional arguments of Scales, and reiterated by Lightfoot (Br. 45), is the premise that membership in the organizations against which the Smith Act is directed—with knowledge of their purposes and intent to achieve them—is a merely passive status, connoting neither actions nor declarations, amounting only to a harmless and constitutionally protected form of peaceful assembly. *Dennis* was different, the argument runs, because the crime there was a "conspiracy" and conspiracy—being active and "at work"—stands on a wholly different constitutional footing from "membership." The argument could stand only if "membership" and "conspiracy" were no more than lifeless abstractions and isolated dictionary terms, divorced from their context in the Smith Act and from the evils to which the Act is directed.

The fact is, however, that the "membership" against which this statute is directed is not passive membership in a literary society but (1) active membership in an organization teaching or advocating the government's violent overthrow, (2) with knowledge of the organization's purpose and (3) a personal intent to accomplish that purpose. The familiar teachings of recent history, reflected in this case and so many others, show that the membership in question, unlike membership in a club or political party, entails rigidly disciplined adherence to and labors for the organization's unlawful objectives. Thus, in rejecting the con-

stitutional attacks presented in *Dennis*, this Court noted as an essential and integral element of the "highly organized conspiracy" its "rigidly disciplined members subject to call when the leaders * * * felt that the time had come for action * * *." 341 U. S. at 511. Similarly, Mr. Justice Jackson wrote in *American Communications Assn.* v. *Douds*, 339 U. S. 382, under the topic heading, *"Every member of the Communist Party is an agent to execute the Communist program"* (p. 431), that (p. 432):

> Membership in the Communist Party is totally different [from membership in lawful political parties]. The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. * * * Moreover, each pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute "cells" in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded.
>
> Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party. Individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility for and participation in all that makes up the Party's program.

It was against membership of this now familiar kind that Congress directed the Smith Act. Expressing the frequently reiterated understanding of the Con-

gress, Congressman McCormack said during the consideration of the Smith Act (84 Cong., Rec. 10454):

> • • • A Communist is one who "knowingly or willfully" is committed to a movement which has as its objective the ultimate overthrow of government by any means, legal or illegal, or a combination of both. We all know that the Communist movement has as its ultimate objective the overthrow of government by force and violence or by any means, legal or illegal, or a combination of both. That testimony was indisputably produced before the special committee of which I was chairman, and came from the lips not of those who gave hearsay testimony, but of the actual official records of the Communist Party of the United States, presented to our committee by the executive secretary of the Communist Party and the leader of the Communist Party in the United States, Earl Browder. That was the testimony, the best evidence presented to our committee at that time, that such is the objective of the Communist Party.

Against the background of the realities with which Congress was concerned in the Smith Act there is no meaningful place for the suggestion that the membership clause must be held invalid on its face because, read only as an arid collocation of words without a context, it *could* reach the "passive member who attends no meetings and engages in no advocacy or organizational activity of any kind" (Lightfoot Br. 45). Certainly, there has been no effort to prosecute such an individual in the cases before the Court or in any other. This is clearly not such a case. And the hypo-

thetical possibility "is particularly nonpersuasive when presented by petitioners, who, the [juries] found, intended to overthrow the Government as speedily as circumstances would permit." *Dennis*, at 515. In any event, the possibility is in fact only imaginary when it is considered in the light of what Congress justifiably believed and sought to guard against when it wrote the Smith Act. Sensibly read, the language negatives any basis for fearing that the innocent or the duped may be ensnared.* It is directed only at those who, with full knowledge of the organization's unlawful purposes, lend it their "aid and encouragement" and add to its strength by their active membership, thereby making themselves "party

---

* The situation is thus very different from that which existed in *DeJonge* v. *Oregon*, 299 U. S. 353, where the indictment was brought under an Oregon statute making it a crime "to preside at or conduct or assist in conducting any assemblage of persons, or any organization, or any society, or any group which teaches or advocates the doctrine of criminal syndicalism." Since it was held that the statute was so broad in its scope that it could reach individuals who were not themselves members of the Communist Party or familiar with its purposes, the Court found the statute unconstitutional on its face with the observation (p. 362) that "peaceful assembly for lawful discussion cannot be made a crime."

Similarly unhelpful to petitioner is *Herndon* v. *Lowry*, 301 U. S. 242, where, reversing a state conviction for an attempt to incite to insurrection by violence, decision here went "on the ground that the Fourteenth Amendment prohibited conviction where on the evidence a jury could not reasonably infer that the defendant had violated the statute the State sought to apply." *Dennis*, at 538 (Frankfurter, J., concurring). There, though the defendant had solicited members for the Communist Party, the defect was a lack of proof "that he had urged or even approved those of the Party's aims which were unlawful." *Ibid.*

to the unlawful enterprise in which it is engaged." *Frankfeld* v. *United States*, 198 F. 2d 679, 684 (C. A. 4), certiorari denied, 344 U. S. 922.

It seems clear, then, that the applicability of the *Dennis* ruling is not to be escaped by the effort to assign to the "conspiracy" there a constitutional significance thought to disappear wholly from the tightly interrelated "membership" now before the Court. We submit, on the contrary, that if, as *Dennis* establishes, Congress can proscribe the teaching and advocacy of violent overthrow of the Government and can proscribe the organizing of a group for such purpose, it can *a fortiori* prohibit active membership in such a group—particularly high-level membership—coupled with knowledge of the purpose and a specific intent to accomplish it as speedily as possible. Indeed, insofar as the problem of conspiracy has a role in sustaining the power of Congress to act, it is scarcely less present here than it was in *Dennis* where the specific term "conspiracy" described the crime. For, as Mr. Justice Jackson observed in the opinion quoted earlier, "ordinary conspiracy principles" are plainly relevant to membership in an organization where membership entails such tightly disciplined, quasi-military, deeply conspiratorial activities as those of the organizations against which the Smith Act is directed. *American Communications Assn.* v. *Douds, supra,* at 432. Such membership obviously partakes of the concert-of-action, combination, and acting-together which characterize conspiracy.

Thus, the Court of Appeals in the instant case correctly observed (R. 123):

> The membership clause of the statute is, of course, nothing more or less than a statute denouncing and making criminal a conspiracy to overthrow the government by force and violence. It is elementary that a conspiracy is a partnership in criminal purposes and that all are guilty who join it with knowledge of such purposes; and all that the statute does is apply this fundamental concept of conspiracy to an organization having for its purpose the forcible overthrow of the government.

And this view, rendered more compelling by the experience of the intervening years, merely echoes what this Court said thirty years ago in the comparable, though measurably less acute, circumstances of *Whitney* v. *California,* 274 U. S. 357, 371–2:

> The essence of the offense denounced by the Act is the combining with others in an association for the accomplishment of the desired ends through the advocacy and use of criminal and unlawful methods. It partakes of the nature of a criminal conspiracy. * * * That such united and joint action involves even greater danger to the public peace and security than the isolated utterances and acts of individuals, is clear.

To be sure, what the Court said in *Whitney*—and has never repudiated—must be read with the weighty concurring opinion of Justice Brandeis, joined by Justice Holmes. But at this juncture the dispositive fact about that opinion is precisely that it was a concurrence, joining in affirmance of the conviction. The State statute there punished membership, as does the provision here, and the conviction could have

rested on membership alone. Affirmance of the conviction could not have been consistent, therefore, with a view that a statute denouncing "membership" as a crime was void on its face.

Thus, both opinions in *Whitney* help to refute the claim that, in the teeth of *Dennis,* upholding the closely related conspiracy provision, the membership clause of the Smith Act may be held void on its face. In itself, the particular word "conspiracy" is obviously not the key to the constitutional problem. Insofar as there is importance in the nature of the public dangers to which "conspiracy" may be a shorthand reference in the Smith Act context, the same factual judgments by Congress which sustain the conspiracy provision of the Act defeat the contention that the companion membership clause is void.

3. The considerations just discussed dispose equally of the claim that the membership provision is invalid because it creates a crime involving only "guilt by association." The defendant convicted under this provision is, in the words of petitioner Scales' brief (p. 25), "held criminally liable only for his own conduct, or for the conduct of others in [a] form of concert or combination which is recognized by our law as warranting holding an individual participant responsible for the acts of other participants." There is no force in petitioner's subsequent observation (*ibid.*) that "'Membership' is not such a recognized combination." For the fact is that the kind of membership at which the Smith Act strikes—active, knowing, purposive—is precisely such a combination, long recognized by Congress and by all the world. And

the only question is whether, having recognized it, Congress was powerless to act against it. The *Dennis* case answers that question, and the square applicability of the answer here is not obscured by the facile claim that the membership in issue amounts only to "guilt by association." "Guilt by association" connotes personal innocence and unawareness. That term cannot be used to describe active membership in a group such as the Communist Party, with full knowledge of its unlawful aims and the personal intent to bring them about.

B. *Validity of the statute as applied in this case*

If, as we have urged, the membership provision is valid on its face, there can be little doubt that it could be and was constitutionally applied in this case. Viewing the indictment alone, and building upon his factually groundless premise that the membership in question is a merely passive "status," the petitioner says (Br. 23) that "[f]or all that appears from the indictment * * *, he never met another member of the Communist Party, much less discussed or plotted the violent overthrow of our Government with any other members." It might as well be said that a man who spent his career in the Navy never met another sailor. The answer is, of course, that the indictment does not charge "membership" as a bare, general abstraction applicable both to a garden club and to Murder, Incorporated, but a particular membership—membership in "a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States

by force and violence as speedily as circumstances would permit" (R. 1), and membership coupled with full knowledge of the group's aims and intent to accomplish them "as speedily as circumstances would permit" (*ibid.*). The indictment describes considerably more than a mere "status (membership) and state of mind" (Pet. Br. 23). It charges, as we have shown, that petitioner joined himself with an unlawful combination which Congress could validly proscribe as a whole and in its constituent parts.

Turning from the indictment to the proof, the validity of the statute's application becomes even clearer. The evidence, reviewed elsewhere (*supra*, pp. 7–10; *infra*, pp. 80–94), demonstrated clearly that the Communist Party—wedded to doctrines of violent revolution, tightly controlling and indoctrinating its members—teaches and advocates the forceful overthrow of the Government. It was proved beyond doubt that petitioner fully understood, supported, and intended the achievement of the Party's ends; that he was no mere innocent or trivial underling, but a *leader* in the organization with control over a significant area; and that he engaged aggressively in the Party activities his active membership and leadership entailed. The proof fully sustained both the jury's verdict and the trial judge's finding of the existence of "clear and present danger."

The considerations which answered the clear-and-present-danger argument in *Dennis* apply here as well. Petitioner is, happily, correct when he states (Br. 20–21) that neither he nor any other individual has power to overthrow the Government by force.

But it was no less clear in *Dennis* that the Party as a whole, with those who conspired to organize it, without the events they anticipated, lacked such power currently or for at least the near future. (But cf. pp. 35–38, *supra*, recalling the experience of countries like Poland and Czechoslovakia and the nature of the Party's infiltration program which, at least today and for the foreseeable future, makes the danger presented by the Party a threat capable of calamitous realization at any time.) *Dennis* teaches, however, that Congress may act against "an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists * * *." 341 U. S. at 509. The power which entitled Congress to act against a conspiracy to organize the Party is at least equally available to strike against the Party-in-being in the only way the Party can function and be reached—through its members. The fact that each member in isolation, even a leading member, may seem insignificant cannot bar Congress from dealing with the "ingredients of the reaction * * *." *Dennis*, at 511. Just as the Nation's commerce may be protected by dealing with individual instances which alone lack consequence (*e. g., Polish National Alliance* v. *National Labor Relations Board*, 322 U. S. 643, 647–648), the Communist Party's threat to the national security may be reached through the members who comprise it, at least where those members have the intent to help the Party achieve its unlawful objective. Such members will either be the leaders who undertake to launch violent action when "the circum-

stances permit", or the indoctrinated followers who will readily and enthusiastically answer the call (*Dennis*, at 509, 511). Petitioner was the Party leader in the Carolinas, a "rigidly disciplined" member of the conspiratorial group, and the one most likely to plan and carry out the Party's unlawful objective in that area.

II

SECTION 4 (F) OF THE INTERNAL SECURITY ACT OF 1950 DOES NOT AMEND THE MEMBERSHIP CLAUSE OF THE SMITH ACT SO AS TO EXEMPT MEMBERSHIP, WITH KNOWLEDGE AND INTENT, IN THE COMMUNIST PARTY

Section 4 (f) of the Internal Security Act of 1950 (Pet. Br. 49) provides that "neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute." Petitioner argues that this provision limits the scope of the Smith Act so that the membership clause no longer applies to membership in any Communist organization (Pet. Br. 28–34). The argument is plainly refuted by the statutory terms; Section 4 (f) refers only to membership "per se" whereas the Smith Act punishes membership, not "per se," but coupled with knowledge and intent. And petitioner's effort to find in legislative history the unlikely repealer the language of 4 (f) does not effect is demonstrably unsound.

Perhaps the use of the term "membership clause" to describe the pertinent provision of the Smith Act is the primary source of plausibility in petitioner's

argument, since it carries the implication that mere "membership" as such is proscribed. The language of the Act dispels this misconception, declaring explicitly that it is limited to anyone who "becomes or is a member of or affiliates with any such society, group or assembly of persons, *knowing the purposes thereof.*" [Emphasis added.] In addition, as we have shown (*supra*, pp. 39–41), the membership provision of the Smith Act requires for conviction an intent to achieve the group's unlawful purposes as speedily as circumstances permit. Unless those requirements of knowledge and intent are ignored, or the reference in the Security Act to membership "per se" is misread to mean membership plus knowledge plus intent, the application of the Smith Act to the offense here charged was not affected.

Petitioner suggests no reason for ignoring the words "knowing the purposes thereof" in the Smith Act. In this case, the court below not only noted their presence, but specifically decided that they added the element of knowledge as an essential part of the offense (R. 126). This interpretation was approved by the Court of Appeals for the Seventh Circuit in the companion case before this Court, *Lightfoot* v. *United States*, 220 F. 2d 661, 671, No. 32, this Term. See also *Dunne* v. *United States*, 138 F. 2d 137, 143 (C. A. 8), certiorari denied, 320 U. S. 790. When this critical difference in express terminology is coupled with the *Dennis* principle (*supra*, pp. 39–41) requiring the further element of intent for conviction under the Smith Act, no room is left for finding in the membership "per se" exemption under the Internal Security Act

an absolution for those Communist Party members who have the requisite knowledge and intent.

What petitioner's argument amounts to is the linguistically untenable claim that when Congress used the language "membership * * * per se" it meant "membership plus knowledge and intent * * * per se". This argument is inherently improbable in view of the use of the language "per se" which must have been inserted to refer to naked membership. Unless the very word "membership" includes within itself the concepts of knowledge and intent, petitioner's argument is basically inconsistent with the Act. This Court has very recently recognized that Congress can legislate and has legislated with respect to membership without either knowledge of the aims of an organization or intent to carry them out. *Galvan* v. *Press*, 347 U. S. 522, 526–528. In that case the Court held an alien deportable on the basis of membership alone without proof of knowledge of the aims of the organization. Moreover, petitioner himself agrees—in connection with his discussion of the constitutional issues—that "membership" can and does exist without knowledge of the organization's aims and without any intent to foster or achieve them.

Since the petitioner can find little comfort in the language of the two Acts, he seeks support in what he terms "logic and legislative history" (Pet. Br. 32). We have little quarrel with him on legislative history.

Neither the precursor bill (H. R. 5832, 80th Cong., 2d Sess.) nor the initial versions of the bills (H. R. 9490, S. 2311) in the 81st Congress, which eventually passed the Internal Security Act, contained anything

comparable to Section 4 (f). Apprehension then arose that the registration provisions (finally enacted as Sections 7 and 8, 50 U. S. C. 786, 787) might be held unconstitutional under the Fifth Amendment on the ground that other provisions of the Act (Sections 2 and 4 (a)) might be construed to make membership in the Communist Party in itself illegal, so that all of the proof necessary for conviction could be obtained from the registration provisions.[27] When the Senate Judiciary Committee sought to meet this objection by inserting in S. 4037 (81st Cong., 2d Sess.) a provision like present Section 4 (f), but applicable only to Sections 4 (a) and 4 (c) of the bill, certain Senators raised on the floor the objection that under this provision the registration provisions might still be claimed to incriminate members because of the Smith Act.[28] In response to this objection, the final version of the bill as it came from conference contained the present language of Section 4 (f); there can be no doubt that it was drafted with the Smith Act in mind.

This is a long way from an intention to modify the Smith Act so that membership in the Communist Party, plus knowledge of its aims, plus an intention to promote such aims, should no longer be covered. The most that can be said is that Congress intended

---

[27] These doubts were expressed in a letter from the late John W. Davis to Senator McCarran, dated February 10, 1950 (96 Cong Rec. 15258), a report from Attorney General Clark (96 Cong. Rec. 14597), and a statement by Senator Langer (96 Cong. Rec. 15204).

[28] Senator Kefauver (96 Cong. Rec. 15198), Senator Humphrey (96 Cong. Rec. 14479), and Senator Lehman (96 Cong. Rec. 14190) raised this point.

the Smith Act to be read with Section 4 (f) as an aid to interpretation so that it would not be held applicable to membership alone, much as this Court read the Sherman Act and the Norris-LaGuardia Act together in *United States* v. *Hutcheson*, 312 U. S. 219, to determine the extent of the exemption from criminal sanctions granted to unions. There is no adequate ground for the improbable conclusion that the Congress which passed the Security Act meant thereafter to exempt Communists, objects of particular concern, from the membership clause of the Smith Act. If that clause did not cover Communists, it would be unlikely to cover anybody.

Elsewhere in the Internal Security Act, Congress gave further evidence that Section 4 (f) was to mean only what it said and not to provide the immunity petitioner seeks from it. Plainly, the extensive findings in Section 2 of the Act (50 U. S. C. 781) as to the menace of the Communist Party hardly comport with the effort to expand the immunity under Section 4 (b) beyond what its terms require. And, to make sure, Congress added in Section 17 (50 U. S. C. 796):

> The foregoing provisions of this title shall be construed as being in addition to and not in modification of existing criminal statutes.

As to the "logic" of petitioner's position, it does not follow, as he suggests, that merely because no criminal law at that time forbade membership *per se*, one must assume the repeal of the nearest thing, membership plus knowledge plus intention. Mere membership is a far different concept, as we have stressed under Point I, *supra*, from membership plus knowledge plus

intent. There is no reason to believe that Congress desired to treat them on a par. As suggested above, it is far more logical to assume that Congress wished to treat them differently and intended Section 4 (f) as an aid to interpretation not only of Sections 4 (a) and 4 (c) of the Security Act, which also do not on their face outlaw mere membership, but also of the membership clause of the Smith Act."

In sum, the language of the various statutes, their legislative history, and logic all lead to the conclusion that membership in the Communist Party, *standing by itself*, should not be made criminal. This leaves unaffected the present case, where the statutory prohibition, the indictment, and the evidence all encompass not only membership in the Communist Party but knowledge of its aims and an intent to promote those aims.

III

THE EVIDENCE FULLY SUPPORTS THE VERDICT

A. *Evidence as to the Party*

Petitioner argues (Br. 37–38) that "the prosecution's evidence in this case with respect to the aims and purposes of the Communist Party falls far short of the standards of proof applied in courts of law." As

---

[29] Similarly, the decision of Congress not to adopt Senator Humphrey's suggestion in 1954 to forbid membership as such, on the ground that it would fortify the claims to self-incrimination under the registration provisions, adds nothing to the petitioner's previous argument (see Pet. Br. 33). If the Smith Act had made membership *per se* criminal, it would have been modified by the 1950 Act. In 1954, as in 1940 and in 1950, Congress merely refrained from imposing a criminal sanction on membership alone.

we have noted, *supra*, p. 7, the evidence which was introduced in this case to establish the illicit aims and objectives of the Communist Party (Appendix A, *infra*, pp. 80–94) was substantially similar to that in previous Smith Act prosecutions involving Communist Party leaders. In each of those other seventeen Smith Act trials (14 conspiracy cases[20] and three membership cases[21]) the jury was satisfied beyond a reasonable doubt that the Party teaches and advocates the violent overthrow of the Government as speedily as circumstances would permit. Eighteen trial judges, including the trial judge in this case, were satisfied that the evidence supported the verdicts on this point. And

---

[20] *United States* v. *Dennis*, 341 U. S. 494; *United States* v. *Frankfeld*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922; *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909; *United States* v. *Fujimoto*, (D. Hawaii, 1952), pending on appeal in the Ninth Circuit; *Yates, et al.* v. *United States*, 225 F. 2d 146 (C. A. 9), pending on writs of certiorari, Nos. 6, 7, 8, this Term; *United States* v. *Forest* (E. D. Mo., 1954); pending on appeal to the Eighth Circuit; *United States* v. *Huff*, (W. D. Wash., 1953), pending on appeal to the Ninth Circuit; *United States* v. *Mesarosh*, 223 F. 2d 449 (C. A. 3), pending on writ of certiorari, No. 20, this Term; *United States* v. *Wellman*, 227 F. 2d 757 (C. A. 6), pending on petition for writ of certiorari, No. 9 Misc., this Term; *United States* v. *Kuzma*, (E. D. Pa., 1954), pending on appeal to the Third Circuit; *United States* v. *Brandt* (N. D. Ohio, 1956), pending on appeal to the Sixth Circuit; *United States* v. *Silverman*, (D. Conn., 1956), pending on appeal to the Second Circuit; *United States* v. *Trachtenberg*, (S. D. N. Y., 1956), pending on appeal to the Second Circuit; *United States* v. *Bary*, (D. Colo., 1955), pending on appeal to the Tenth Circuit.

[21] *United States* v. *Lightfoot*, 228 F. 2d 861, pending on writ of certiorari, No. 32, this Term; *United States* v. *Noto*, (W. D. N. Y., 1956), pending on appeal to the Second Circuit; *United States* v. *Blumberg*, (E. D. Pa., 1956).

a similar conclusion was reached by twenty appellate judges who reviewed the evidence."

Urging that the jury was not free to reach the same conclusion in this case, petitioner focuses his argument exclusively on the witness Lautner (Br. 38–39), who, he points out, left the Party before the period covered by the indictment. As to this witness alone, it is clear, as the court below said (R. 127), that his description of the Party's aims and doctrine over a long period until 1950 had substantial probative force in view of the absence of any evidence of a change. Moreover, petitioner wholly ignores the other evidence, which did not merely fail to show a change, but, as the court observed (R. 127), "clearly indicated that there has been no such change." The testimony of the witnesses Clontz and Childs was plain that the Party continued, continuously after 1950, to teach and advocate the violent overthrow of the Government (*supra*, pp. 8–9, 20–23). Childs told in detail how he was taught such doctrine in 1952 at the secret Party training school where petitioner was an instructor (R. 67–96).

Petitioner further assails Lautner's testimony with the assertion (Br. 38) that this witness expressed a merely "personal opinion" on the issue of advocacy of force and violence, "despite contrary statements by various Party officials and in Party publications * * *." However, Lautner testified as an expert witness on the basis of his twenty years' experience as a high ranking official of the Communist Party, his intimate association with other top leaders as well as

[11] Including five of the full court of seven in the *Mesaros* case.

with rank-and-file members of the Party, and his personal participation in National Conventions, National Committee meetings, and teaching activities of the Party (Tr. 439). On the basis of such qualifications, he testified that the ultimate aim of the Communist Party of the United States is to bring about the overthrow of the Government by force and violence when certain subjective and objective conditions are present (Tr. 439–440). His qualifications to speak as an expert were clear. "It is difficult to see * * * how better evidence of the teachings and purposes of a party could be obtained than from the testimony of those who heard and participated in the teachings sponsored by the party." *Frankfeld* v. *United States*, 198 F. 2d 679, 689 (C. A. 4), certiorari denied, 344 U. S. 922. Characterizing the testimony as "personal opinion" does not alter the decisive point that it was properly submitted to the jury and that it was for the jury to accept or reject. *United States* v. *Dennis*, 183 F. 2d 201, 229 (C. A. 2), affirmed, 341 U. S. 494. Similarly, the contrary public professions of Party leaders and publications were for the jury's appraisal, and petitioner's reliance on these is only a vain effort to ask that the evidence be reweighed here once again.

We submit, in short, that the jury in this case, like so many juries and courts before it, was clearly justified in concluding that the Communist Party, in the relevant period, taught and advocated overthrow of the Government by force and violence.

B. *Evidence as to Petitioner*

Acknowledging his role as a Party functionary, petitioner contends (Br. 35–37) that the evidence was

insufficient to show his knowledge of the Party's aims and intent to achieve them. Of course, petitioner's status as a *leader* of such a rigidly disciplined and indoctrinated organization is in itself strong evidence against the suggestion that he might not have known what the Party was about or purposed the furtherance of its ends. However, the record goes far beyond this and shows not only that petitioner was "in contact with" the Party's aims (Pet. Br. 36), but that he himself actively taught the Party doctrine of the necessity for and desirability of the violent overthrow of the United States Government as speedily as circumstances would permit.

In the years between 1948 and 1951, petitioner acted as a personal tutor to the witness Clontz, supplying him with volumes of Communist Party literature and explaining to him the Party's vanguard role in the coming proletarian revolution (*supra*, pp. 10, 13–20). Petitioner directed the witness Childs to remain in industry where there were unions because the Communist Party considered that trade unions are the "schools of the revolution" (Tr. 1062). In 1952, petitioner was instrumental in establishing a secret Communist Party training school which was held in North Carolina, at which he was an instructor, and at which Childs was taught that the ultimate aim of the Communist Party always remains the forceful and violent overthrow of the Government (R. 87–88). Tactics may change from day to day, Childs was taught, but the strategy—the ultimate objective, over-

throw of the existing government—never changes (R. 87–90).[33]

Reflecting and acting upon the revolutionary purposes and teachings of the Party, petitioner explained to Clontz the nature and importance of underground activities (R. 55). He explained that in an emergency, "or if a war broke out with the Soviet Union, he would immediately go underground" himself (*ibid.*). And in December 1951, during the fighting in Korea, petitioner told Clontz that he had in fact gone underground, instructing Clontz to deal with a new contact and cautioning against the use of the mails, telephone, or telegraph for communications with him (R. 56). In these activities, petitioner gave concrete point to the revolutionary doctrines he taught and followed (see R. 41); vividly belying his effort now to deny the evidence of his intimate knowledge and unlawful intent with respect to the Party's objectives.

Petitioner erroneously asserts (Br. 36) that the "only testimony relating to any declaration by the

[33] This was in accord with the statement of William Z. Foster in an article in the June 1950 issue of *Political Affairs*, (Ex. 23) the official theoretical organ of the Communist Party (Tr. 326). In this article Foster repudiated as incorrect certain formulations which had appeared in his book *Twilight of World Capitalism* (Def. Ex. 1, Tr. 524), and he pointed out (Tr. 525) that "regardless of tactical variations that may be necessary as the class struggle proceeds, the road to socialism remains the same, through the defeat of the capitalist class and the establishment of the dictatorship of the proletariat."

It may be noted too that this hardly supports petitioner's assertion (Br. 38–39) that Lautner's testimony was contrary to statements of Party officials and publications.

defendant or in his presence, wherein overthrow of the Government by force is directly adverted to, concerns a conversation (R. 35) in December 1948 * * *." Actually, the record is replete with declarations made by petitioner to witnesses Clontz and Childs wherein petitioner advocated forceful overthrow of the Government. To begin with, we recall the evidence to which petitioner himself refers that when Clontz, after reading Communist literature furnished by petitioner advocating the necessity of the violent overthrow of capitalist governments, inquired whether Communism could be brought to the United States through the process of education, petitioner replied that the use of force was the only answer (R. 35).[34] On a later occasion, in the spring of 1950, petitioner pointed out to Clontz that the Communist Party of the United States could count on assistance from the Soviet Union when the time for revolution was ripe. Petitioner said that "as a practical matter the Soviet Union would not land troops at the commencement of the revolution, that the Communists here in the United States would have to start the revolution themselves" (R. 49–50). And Childs testified that petitioner had advised him that it would be necessary for the Red Army to "liberate" this country if, when the time for revolution arrived, the Communist Party was unprepared to cope with the situation (R. 95–96).

Again, we have Childs' testimony that at the Party school organized and directed by the petitioner, in the

[34] In his argument on this point, petitioner asserts that the testimony with respect to the 1948 declaration is incredible. But that was, of course, a matter for the jury to decide.

summer of 1952, it was stressed that the works of Marx, Lenin, and Stalin "are the basic theory on which all final decisions [of the Party] are made" (R. 86) and that the ultimate purpose of the Party, as embodied in those teachings, always remains the overthrow of the Government by force and violence (R. 87–88). Another member of the staff stated that "Socialism * * * can be established only through the overthrow of the capitalists" (R. 90), who, the students were told, "would not surrender peacefully" (Tr. 1115).

Given the nature of the offense, it would be absurd to expect, and it is not required, that there be even more extensive evidence in the form of explicit statements by the petitioner himself announcing his knowledge and intent.[35] Those we have summarized are surely numerous and damaging enough. Together with the unquestioned fact that petitioner was a Party member and its leader in the Carolinas, and bearing in mind the proof of the duties and activities such a role entailed, we submit it would have been incredible to suppose that petitioner was ignorant of the Party's aims or lacking in intent to help achieve them. At the least, the jury clearly had ample ground for finding the requisite knowledge and intent. And so the

[35] As the court below pointed out (R. 130–131), the charge here is "membership" with knowledge and intent and does not, strictly speaking, require evidence of petitioner's own statements as a teacher and advocate. We have shown, however, that there was proof of many such statements from which, in addition to his position and conduct in the party, the jury was plainly warranted in inferring the necessary knowledge and intent.

Court of Appeals was correct when it rejected the claim of insufficient evidence and said (R. 133):

> Uncontradicted testimony as to statements by him showed that he was thoroughly aware of the unlawful aims and purposes of the party, was in sympathy with those aims and purposes and entered into its activities with complete understanding of what was involved. On the evidence before it, the jury was amply justified in finding him guilty of the crime charged * * *.

IV

PETITIONER RECEIVED A FAIR TRIAL

A. *The Denial of Petitioner's Motion Challenging the Composition of the Grand Jury Was Proper*

Petitioner urges that the trial court committed prejudicial error in refusing to grant the motion challenging the composition of the grand jury which indicted him (Br. 39–41). The motion attacking the grand jury panel was filed prior to trial and concurrently with a similar motion of the petitioner attacking the then existing method of selecting petit jurors. The Government objected to the motion as to the grand jury on the ground that it was not timely filed. Since the evidence which could be adduced on the method of selecting jurors applied both to the grand and petit jury systems, the court reserved to the Government its objection as to timeliness and proceeded with a hearing on the merits. At the conclusion of the hearing, the court denied the motion attacking the grand jury panel because (1) the motion was not timely filed and (2) the evidence produced at the

hearing failed to show that the method of selecting jurors was improper (Motion Tr. 150–153).[38] Each of these grounds is independently sufficient to sustain the ruling.

1. *Petitioner Waived the Right to Challenge the Composition of the Grand Jury*

As shown in the Statement (*supra,* p. 5) and in the trial court's undisputed findings (Appendix B, *infra,* pp. 95–99), petitioner, after being arraigned on December 16, 1954, was granted two lengthy extensions totaling 64 days in which to file pre-trial motions. At the end of these extensions, on February 18, 1955, petitioner filed numerous pre-trial motions but not the one now in question attacking the composition of the grand jury. This motion was not filed until March 8, 1955, more than two weeks after the ample extensions granted by the trial court had expired. The court found (Appendix B, *infra,* pp. 95–100), and there is no contrary suggestion, that the information on which this belated additional motion was based had been available to defendant and his counsel from the time of the indictment, and that there had been not even an attempt to explain or justify the inordinate delay.

In these circumstances, the trial court was clearly justified in rejecting the motion as untimely. Under Rule 12 of the Federal Rules of Criminal Procedure, such a motion must be made before the plea is entered or "within a reasonable time thereafter" when per-

[38] See Appendix B, *infra,* pp. 95–100, Findings of Fact, Conclusion of Law and Order filed by the trial court on April 15, 1955.

mitted by the court. Failure to present the motion within the prescribed time constitutes a waiver. *Carruthers* v. *Reed*, 102 F. 2d 933, 939 (C. A. 8); *Wright* v. *United States*, 165 F. 2d 405, 407 (C. A. 8); *Universal Milk Bottle Service* v. *United States*, 188 F. 2d 959, 962 (C. A. 6); "Notes of Advisory Committee on Rules" following Rule 12, p. 2532 in 18 U. S. C. The Rule provides that "for cause shown" the court "may grant relief from the waiver." But no cause was shown here and there is no basis for questioning the propriety of the decision that the waiver effectively barred the complaint against the grand jury. *Frazier* v. *United States*, 335 U. S. 497, 503; *Shaw* v. *United States*, 1 F. 2d 199, 201 (C. A. 8); *Nations* v. *United States*, 52 F. 2d 97, 99 (C. A. 8); *Moffat* v. *United States*, 232 F. 522, 528 (C. A. 8); *Charles Burns Hornbook* v. *United States*, 216 F. 2d 212 (C. A. 5).

2. *In any Event, the Complaint is on its Merits not Ground for Reversal of the Convention*

Petitioner premises almost his entire argument on this point upon his allegation that it was impossible for the Jury Commission to know whether the jury box contained the requisite 300 names of qualified persons at the time of drawing (Br. 40), and that there was, therefore, a failure to meet the requirements of 28 U. S. C. 1864. This contention is rebutted by the evidence adduced at the hearing.

The Deputy Clerk testified, that, at the time the indicting grand jury panel was drawn, the jury box contained "something in the neighborhood of probably 500" names (Motion Tr. 83). He further stated

that he had personal knowledge of the background and status of practically all of the persons who were in the box, that they represented a cross-section of all walks of life in the community, and that all persons selected to serve were qualified (Motion Tr. 84–85).

The Clerk of the District Court testified that the procedure used by the Commission in selecting names for the jury box[37] had been commended by members of the bar throughout the district and by others for the fairness of the jurors serving in the courts (Motion Tr. 48, 49). This witness also testified that the procedure used had been discussed with inspectors from the Administrative Office of the United States Courts and with other clerks and visiting judges; and that he had found this to be "substantially the procedure followed elsewhere," uncriticized by any of these sources (Motion Tr. 51).

Aside from the foregoing, no testimony was adduced by petitioner as to the number of qualified names in the box at the time of the grand jury selection. It is thus evident that the inference petitioner would have

[37] In selecting names for the grand and petit juries, requests were sent out on form letters, under the joint direction of the Clerk and Jury Commissioner, who constitute the Jury Commission, to men of knowledge, character and standing who knew the people in the respective counties, asking them to send in suitable names for jury service (Motion Tr. 18–30). Upon the return of these forms, the commission determined the eligibility of the names submitted and eliminated those found to be ineligible to serve. The eligibility was determined by the Clerk or Jury Commissioner's personal knowledge of the individuals' names or from comments of the persons requested to send the names. All names not eliminated by this process were then placed in the jury box on separate cards indicating the names and addresses of the persons selected (Motion Tr. 33–35).

this Court draw falls far short of rebutting the presumption of regularity which attends the work of the Jury Commissioner and Clerk of the Court, a presumption which may be overcome only by clear and convincing proof. *Frazier* v. *United States*, 335 U. S. 497; *Fay* v. *New York*, 332 U. S. 261; *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217. In addition, even if it be assumed *arguendo* that the Jury Commission was not certain that there were 300 *qualified* names in the jury box at the time of the drawing, this fact standing alone is an insufficient basis, without a showing of prejudice, upon which to nullify an indictment.[28]

And, far from suggesting prejudice, the record demonstrates that there was none. The testimony showed that the Clerk never intentionally or systematically excluded any class or group and that he sought a wide selection of jurors from all walks of life (Motion Tr. 47). Acting on the express direction of the District Court, the Jury Commissioner made special efforts to secure women and Negro jurors (Motion Tr. 25), and there was no exclusion whatever of minority political or racial groups (Motion Tr. 58).

[28] "Does this statute mean that there must be 300 names in the box of qualified persons as a condition of any valid drawing of any jurors therefrom? If this was the meaning of Congress it would involve the duty on the part of the commissioners of determining in some reliable manner the question of eligibility, and would have rendered it necessary for the legislature to have proceeded further and to have granted them authority and process for hearing and determining the matter in a quasi-judicial manner; but they are not triers, nor have they the power to appoint triers. I do not think this is the meaning of the statute." *United States* v. *Rondeau*, 16 Fed. 109, 111 (E. D. La.).

On this record, petitioner cannot prevail in his argument (Br. 41) that, because the Clerk and Jury Commissioners sent letters to various individuals and leaders of organizations seeking suggested names, they unlawfully delegated their duties so that the indictment must now be quashed. Disposing of a similar contention, the Court of Appeals for the Third Circuit recently said (*Dow* v. *Carnegie-Illinois Steel Corporation*, 224 F. 2d 414, 427):

> * * * The jury officials could in the exercise of their discretion resort to others for the suggestion of names so long as it could reasonably be expected that a cross-section would thereby be obtained, and using the names taken from such a variety of sources does not result in an unlawful delegation of duty by the officials.

The evidence here gives every reason to believe that a proper cross-section was obtained and that the Jury Commissioners duly exercised their duty of selection. As the Third Circuit observed in the *Dow* case (*supra*, at 427), such circumstances leave no basis for invoking the rule of *Glasser* v. *United States*, 315 U. S. 60, where the vice was solicitation of names from only a single organization with a resulting list improperly weighted. See also *United States* v. *Dennis*, 183 F. 2d 201, 218 (C. A. 2), affirmed on other issues, 341 U. S. 494; *United States* v. *Flynn*, 216 F. 2d 354, 378ff (C. A. 2), certiorari denied, 348 U. S. 909; *Walker* v. *United States*, 93 F. 2d 283, 291 (C. A. 8).

It may be noted, finally, that after denial of the motion challenging the grand jury selection on the ground that the motion was untimely and also on the

merits, the trial court observed that a revised list of prospective jurors was then being prepared by the jury officials involved in this case (Motion Tr. 153–154). Petitioner's trial counsel agreed that the method of selection of the revised list of jurors was satisfactory and met all his objections (Motion Tr. 154–164). Accordingly, the court quashed the then existing venire of petit jurors and ordered a new panel drawn under the revised method of selection (Motion Tr. 164). It would appear, therefore, that any defect of which petitioner could have made timely complaint has disappeared for the future. In view of the complete absence of prejudice, and apart from other reasons already stated, there is no sound basis in petitioner's tardy motion for invoking the supervisory powers of this Court.

B. *Evidence Relating to the Aims and Purpose of the Communist Party and Petitioner's Knowledge and Intent Was Properly Admitted*

Petitioner complains (Br. 41–43) of the admission of certain evidence which was introduced to show the unlawful aims of the Communist Party and his unlawful knowledge and intent. Contrary to his contentions, the evidence in question was all relevant to these material issues and therefore admissible.[39]

Specifically, petitioner complains of "evidence concerning political, social, and economic causes sup-

[39] The trial court excluded evidence as to the circumstances surrounding the witness Lautner's expulsion from the Party as well as certain evidence with regard to the Party's teaching on the question of religion although the prosecution felt that such evidence was properly admissible. See *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909.

ported by the Communist Party" (Br. 42), referring to evidence of the Party's position on the so-called "Negro question" and the war in Korea. The Party's teachings on the Negro question, particularly with reference to the right of self-determination and the proposed establishment of a separate Negro nation in the South, was shown to be a basic part of the strategy and tactics of the proletarian revolution (R. 36, 39). *Foundations of Leninism* (Ex. 5), which petitioner described as the bible for present-day Communists, explains the method by which the Party's program of self-determination is to be used in facilitating the forcible overthrow of the imperialist government:

> Lenin has proved, and the imperialist war and the revolution in Russia have confirmed it, that the national question can be solved only in connection with and on the basis of the proletarian revolution, and that the road to victory in the West leads through the revolutionary alliance with the liberation movement of the colonies and dependent countries against imperialism. The national question is part and parcel of the general question of the proletarian revolution and of the dictatorship of the proletariat [pp. 78–79].

Similarly, the testimony with regard to the Party position on the Korean war was properly admissible not only, as the court below pointed out (R. 127), in showing the pattern of arousing dissension to foster the Party's objectives, but also to illustrate the tactic of shifting alliances with other groups in seeking short-range Party objectives (R. 85).

As to petitioner's objection (Br. 42) to the evidence of a demonstration by a Communist leader showing how a pencil could be used to kill a man on a picket line, the record discloses that this instruction was given at a secret Party school in the summer of 1952 conducted by the petitioner for a hand-picked group of Party faithful (R. 93–94). The demonstration was given by the District Organizer of the Communist Party of Virginia and a member of the staff of the school who was present at this as well as all other phases of instruction at the school. The instructor, while giving his demonstration, explained to his students that they might need to use this information some day when they were on a picket line. The relevancy of this testimony is apparent in the light of the Party program of industrial concentration and its self-appointed role as vanguard of the working class which was discussed in some detail at the school (R. 81–82; 85–88; Ex. 22).

Petitioner complains, finally (Br. 42–43), of the trial court's admission of testimony by the witnesses Lautner and Clontz concerning acts and declarations of third persons which did not take place in petitioner's presence. The record discloses, however, that all of this testimony bore directly on the material issues of the Communist Party's nature and petitioner's knowledge and intent with respect thereto. Clontz testified principally to conversations he had with the petitioner. His testimony regarding statements made by leading Party functionaries at the Jefferson School of Social Science in New York related back to the petitioner, for Clontz was sent to the

school for such indoctrination by the petitioner and discussed these teachings with petitioner upon his return (R. 51–54). Similarly, Clontz told of statements by Herbert Aptheker, described by petitioner as "one of the scholars of the Communist Party", and again testified to petitioner's approving discussion of the statements (R. 42). It is not disputed that the nature of the Communist Party was in issue in the case. It seems clear that this problem can be explored only by examining the acts and declarations of Party leaders and members, and the testimony of which petitioner complains was plainly relevant and admissible for this purpose. Moreover, the evidence revealing petitioner's direct connection with the statements—both in his role of recruiting disciples to hear them and in his elaboration and endorsement of them—was relevant to the issues of his knowledge and intent.

The testimony of Lautner was admissible on similar grounds. Lautner's background in the Party qualified him to speak as an expert on its doctrines and objectives. *United States* v. *Dennis*, 183 F. 2d 201, 229 (C. A. 2), affirmed, 341 U. S. 494; *Frankfeld* v. *United States*, 198 F. 2d 679, 689 (C. A. 4), certiorari denied, 344 U. S. 922. See *infra*, pp. 80–81. Here again, petitioner's objection that the testimony concerned conduct and declarations of persons other than himself would, if it were valid, require a conclusion that the nature of the Party, a material issue, could never be proved. For the Party, of course, is by definition a group. And the group's character could not be known by examining only the individual

member in isolation. In a way, this subordinate evidentiary argument of petitioner's harks back to his effort on the constitutional issue to divest "membership", as used in the Smith Act, of its essential meaning—of its denotation of concert with and adherence to others. The fallacy of misdefining words defeats his contention here as well as there.

C. The Trial Court Acted Well Within the Limits of its Discretion in Denying Petitioner Access to Reports Which Had Been Transmitted to the Federal Bureau of Investigation by the Witnesses Clontz and Childs

Petitioner argues briefly (Br. 43–44) that the trial court committed reversible error when it denied him access to reports which had been made to the F. B. I. by the witnesses Clontz and Childs. The argument is without merit.[40]

Prior to trial, in what was obviously designed as a broad fishing expedition, petitioner moved pursuant to Rule 17 (c), F. R. Crim. P., for pre-trial inspection of documentary evidence in the possession of the Government and for all written statements previously furnished by the witnesses who would be called for the prosecution. During the trial, while the two witnesses in question were being cross-examined, petitioner again sought inspection of their written statements, which were in the possession of the F. B. I. and had not been used to refresh their recollection.

[40] A similar contention, arising from facts which differ in some respects from the ones here, is before the Court in *Jencks* v. *United States*, No. 23, and is discussed at greater length in our brief therein (Point I).

Although there was no suggestion, and there is none now, of any foundation for a belief that the written statements would impeach or contradict the witnesses' testimony in any way, the trial judge examined the statements himself *in camera* for the purpose of determining whether they would have any impeaching value and should therefore be made available to petitioner.[a] Finding no inconsistencies between the testimony at the trial and the written statements, he denied the motion for inspection (Tr. 1358, 1380–1381).

We submit that the trial judge's inspection of the documents, where there was no foundation of any kind for exploring them, gave petitioner even more than his due, and that there was plainly no abuse of discretion in denying the inspection petitioner sought. For it is well established that a "large discretion must be allowed the trial judge" with respect to the production of documents; and that in the absence of abuse the exercise of that discretion will not be upset. *Goldman* v. *United States*, 316 U. S. 129, 132; *D'Aquino* v. *United States*, 192 F. 2d 338, 375 (C. A. 9), certiorari denied, 343 U. S. 935; *Little* v. *United States*, 93 F. 2d 401, 407 (C. A. 8), certiorari denied, 303 U. S. 644; *Arnstein* v. *United States*, 296 Fed. 946, 950 (C. A. D. C.), certiorari denied, 264

[a] Compare the following line of cases in the Second Circuit: *United States* v. *Andolschek*, 142 F. 2d 503; *United States* v. *Krulewitch*, 145 F. 2d 76; *United States* v. *Ebeling*, 146 F. 2d 254; *United States* v. *Simonds*, 148 F. 2d 177; *United States* v. *Cohen*, 148 F. 2d 94; *United States* v. *DeNormand*, 149 F. 2d 622; *United States* v. *Beekman*, 155 F. 2d 580; *United States* v. *Grayson*, 166 F. 2d 863.

U. S. 595. Cf. *Glasser* v. *United States*, 315 U. S. 60; *Alford* v. *United States*, 282 U. S. 687. This is so even where the documents sought have been used at the trial for the purpose of refreshing a witness' recollection. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 233, 234. Where, as here, the documents have not been used for that purpose, the trial court's discretion is even greater. *Goldman* v. *United States, supra.* These familiar principles are controlling in this case.

There is no basis for another view in the argument (Pet. Br. 44) that, in his own examination of the written statements, the trial judge observed that he would not regard an omission as an inconsistency (R. 96). Apart from the fact that the court could have refused to examine the statements altogether, and apart from whether its statement on omissions was sufficient as an abstract matter, the fact is that the trial judge found neither omissions nor inconsistencies in his examination. Thus, after examining the statements of the witness Clontz, he advised counsel that he had found "no inconsistency in the reports with his testimony * * *. I can go further and say that I did not find that he testified to matters that were not in the report, but I think I told you at the time that I would examine it only for inconsistencies" (Tr. 1358). Similarly, after reading the Childs report he said: "I found no report in the Federal Bureau of Investigation which contains a statement inconsistent with what the witnesses testified to and I do not find that he testified to anything he did not report" (Tr. 1381). It is clear that, even on peti-

tioner's extreme and dubious premises, his rights to explore for hoped for inconsistencies were more than fully upheld.[42]

D. *The Congressional Findings in the Internal Security Act of 1950 and the Communist Control Act of 1954 Did Not Preclude a Fair Trial*

Petitioner's final contention (Br. 44–45) is that, without a shred of concrete evidence of prejudice, it must be presumed that he could not have had a fair trial because Congress, in the Internal Security Act of 1950 (50 U. S. C. 781) and the Communist Control Act of 1954 (50 U. S. C. 841), made findings that the Communist Party aims at the violent overthrow of the Government. Apart from the fact that he did not preserve this point for appeal and raises it for the first time in this Court,[43] the argument must be rejected.

The argument proceeds on the unrealistic and unacceptable assumptions, without proof, that the jurors (1) were in fact familiar with the statutes in question and (2) would ignore the court's instructions to determine the nature of the Communist Party from the evidence before them for themselves, and merely follow unthinkingly the findings of Congress in the

[42] At the Government's request, the written statements inspected by the trial judge *in camera* were sealed as part of the record in this case (Tr. 1382–1384) and are thus available for this Court's review.

[43] Petitioner did argue below, as he does here (see pp. 51–56, *supra*), that Section 4 (f) of the Internal Security Act bars prosecution under the membership provision of the Smith Act. But that argument is clearly a different one from the belated contention under consideration at this point.

Internal Security Act and the Communist Control Act. These assumptions attack the basic premises of the jury system itself. If they are correct, it must follow that the *Dennis* case and all other Smith Act prosecutions were erroneous and that the Communist Party, by becoming a threat so grave as to require explicit recognition by Congress and much of the public, has immunized its organizers and members against prosecution. As the Court of Appeals for the Seventh Circuit said, rejecting the same argument, in *United States* v. *Lightfoot,* 228 F. 2d 861, 870, pending on certiorari, No. 32 this Term:

> In effect, it is defendant's position that all persons subject to prosecution under the Smith Act are immunized from prosecution indefinitely, or at least as long as the Communist Control Act remains a part of the laws of this nation. We do not agree. If any jury had any such prejudgment, the instructions of the Court cured their error. Furthermore, whether any such belief existed in the mind of any juror, might have been discovered on the *voir dire* examination.

Petitioner was certainly entitled to investigate, in this as in any other case, to determine whether the jurors might be disabled by bias from trying him fairly. But the conclusive presumption of bias he seeks to establish rests only on a speculative hypothesis which cannot avail to impugn the jury's verdict. Compare *Accardi* v. *Shaughnessy,* 347 U. S. 260, with *Shaughnessy* v. *Accardi,* 349 U. S. 280.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

J. LEE RANKIN,
Solicitor General.
WILLIAM F. TOMPKINS,
Assistant Attorney General.
HAROLD D. KOFFSKY,
KEVIN T. MARONEY,
WILLIAM F. O'DONNELL,
PHILIP T. WHITE,
Attorneys.

SEPTEMBER 1956.

APPENDIX A

EVIDENCE THAT THE COMMUNIST PARTY IS A GROUP OR SOCIETY TEACHING AND ADVOCATING THE OVERTHROW OF THE UNITED STATES GOVERNMENT BY FORCE AND VIOLENCE

In July 1945, the Communist Party was reconstituted, basing itself "upon the principles of scientific Socialism, Marxism-Leninism" (Ex. 17) and rejecting the Browder program of class peace reflected in the Communist Political Association as "notorious revisionism" which violated the most fundamental principles of Marxism-Leninism (Ex. 16, R. 20).

Government witness Lautner [46] testified (R. 23) that the words "Marxism-Leninism" as historically used throughout the Communist movement meant—

> * * * the writings of Marx, Engels, Lenin and Stalin, and its applications in this era, which began about the turn of the century, which era is known as the era of monopoly capitalism and imperialism. That is the theory and tactics of the proletarian revolution in general and the theory and tactics of dictatorship of the proletariat in particular * * *.

[46] Lautner joined the Party in 1929, and for the greater part of his Party career, until his expulsion in 1950; was a high-ranking paid functionary. He attended the Party's highest school, the National Training School, in 1930 and 1941 (R. 13, 15, 23); was a District Organizer in West Virginia from 1936 to 1940 (R. 14–15); taught Party classes from 1946 to 1948 (R. 21); attended National Party Conventions in 1936, 1938, 1940, 1942, 1945 and 1948 (Tr. 313); was a member of the National Review Commission from 1948 to 1950, and from 1947 to 1950 headed the New York State Review Commission (R. 15–16).

The revolutionary character of the program to which the Communist Party reverted at the 1945 National Convention and consistently adhered thereafter is illustrated by the following testimony of Lautner (R. 28–29):

> The ultimate aim of the Communist Party of the United States is when these two conditions, objective and subjective conditions, are given, that I described before, a national crisis or a war, on one hand, and the ability of the Communist Party to give leadership to decisive sections of the working class, neutralize other sections of the population, when these conditions are present, to bring about the destruction by force and violence of the imperialism, monopoly capitalism and its governments, that is the basic aim and objective of the Communist Party, and through destruction of the state apparatus and power of monopoly capitalism, imperialism, to bring about socialism through the dictatorship of the totalitariat [sic].

This testimony that the Communist Party is committed to the violent overthrow of the Government of the United States and its destruction is corroborated by basic Marxist-Leninist "classics" which treat openly the subject of force and violence in the establishment of the dictatorship of the proletariat and stress that the goal of the Party can be reached only through actual class revolt attended by violence and bloodshed (R. 24–25). Among the texts which Lautner verified as being used at Party schools were the following:

> *Communist Manifesto* (Ex. 1); *Foundations of Leninism* (Ex. 5); *Problems of Leninism* (Ex. 6); *State and Revolution* (Ex. 7); *Left Wing Communism* (Ex. 8); *What Is To Be Done?* (Ex. 9); *Imperialism* (Ex. 10); *History*

of the Communist Party of Soviet Union (B) (Ex. 12); *Strategy and Tactics of the Proletarian Revolution* (Ex. 13); *Dictatorship of the Proletariat* (Ex. 14); *Theory of the Proletarian Revolution* (Ex. 15); *Struggle Against Revisionism* (Ex. 16); *Outline on Fundamentals of Marxism* (Ex. 18).

These texts contain the same principles of Marxism-Leninism which Lautner studied in the 1930 and 1941 National Party training schools, and which he later taught in supervised Party classes in the years 1946, 1947 and 1948 (R. 23).

When, in July 1945, the Communists turned their backs on the concept of peaceful cooperation between all progressive forces in our society, and established a new Communist Party for a resumption of the Marxist-Leninist class war, its leaders promptly directed their attention to a revitalized training program in Marxism-Leninism (R. 21). Among the outlines issued by the Party to facilitate its program of Marxist-Leninist training is the *Outline on Fundamentals of Marxism* prepared by the National Education Commission (Ex. 18.)[45] Because this *Outline* demonstrates that the Party itself relied in its teachings on the particular Marxist-Leninist documents which were read or cited to the jury in this case to show the Party's revolutionary program, and because it is perhaps the most compact source reference to these "classics", it serves as an authoritative exposition of the Party's doctrines and aims.

Lesson I (pp. 1–3) is an introduction to Marxist-Leninist theory. It sets forth the Leninist slogans

[45] This *Outline* was used extensively by Lautner as a guide in teaching classes in Marxism-Leninism, political economy, Party organization, Party structure, democratic centralism and Party discipline to Party functionaries in New York City from 1946 to 1948 (R. 21–22).

"Without a revolutionary theory there can be no revolutionary movement" and "Our teaching is not a dogma but a guide to action," as showing the importance of Marxist-Leninist theory. It refers to the theory of Marx and Engels that in our capitalist society there is a continual class war between the capitalists and the workers, which will be ended by socialism, as in the Soviet Union.[*] The lesson refers to Stalin's analysis of Lenin's contribution to Marxism, as set forth in *Foundations of Leninism* (Ex. 5, pp. 9–10). Stalin explained that Leninism is the further development of Marxism on an international scale and with its revolutionary content restored. Thus—

> Leninism is Marxism of the era of imperialism and of the proletariat revolution. To be more exact, Leninism is the theory and tactics of the proletarian revolution in general, the theory and tactics of the dictatorship of the proletariat in particular.

Lesson II deals with the general features of the capitalist system and the contradictions in the system. After detailing the economic basis for the class war, the *Outline* states that socialism is the only solution. The means by which the socialist state is to be achieved is (p. 6) that

[*] Chapter I of the *Communist Manifesto* (Ex. 1), one of the assigned readings on this subject, traces this class antagonism, which is described as "the more or less veiled civil war, raging within the existing society" to the point "where the war breaks out into open revolution and where the violent overthrow of the bourgeoisie lays the foundation for the sway of the proletariat" (p. 27). The other assigned reading concludes that "capitalism is pregnant with revolution, whose mission is to replace the existing capitalist ownership of the means of production by Socialist ownership." *History of the C. P. S. U.*, p. 126 (Ex. 12).

> The proletariat seizes political power and turns the means of production into state property.

The *Outline* rejects the concept, which Stalin also rejects (see Ex. 5, pp. 55–56), that the economic structure in the United States excepts the United States from the inherent contradictions of capitalism, which require its overthrow." The *Outline* charges the Browder program in 1944–1945 with rejecting the Marxist analysis of the development of capitalist economy and adopting a bourgeois program (p. 6).

Lesson III deals with the role of trade unions in developing the class struggle and states the Party's function as that of converting the unionists' economic struggles into Communist political struggles. One of the points made in the *Outline* is that trade unions should be made "schools for Communism."

Lesson IV teaches that, after the revolution, the state is in the form of the dictatorship of the proletariat, which has the role of destroying capitalism and organizing socialism (pp. 13–15). Lenin is quoted as describing the new dictatorship as an alliance between the proletariat and some members of the peasantry, intelligentsia, etc., for the purpose of completely overthrowing capitalism and establishing socialism. It is characterized as a new type of state with a new type of democracy. The working class cannot take possession of the existing state; what is required is "the shattering of the former state power and its replacement by a new and really democratic state." But Lenin tells Party members what "democratic" means: it is "the democracy of the exploited majority based

---

[47] Lenin's *State and Revolution* (Ex. 7) is quoted in the outline (p. 5) to the effect that this form of capitalist economy proves the "nearness, ease, feasibility, and urgency of the Socialist revolution."

upon restriction of the rights of the exploiting minority and directed against this minority." It is anti-Marxist to hold "that socialism can be achieved without the prior conquest of political power by the working class—that socialism can gradually 'evolve' out of capitalism without the establishment of a state directed by the working class which will replace the capitalist state."

The *Outline* assigns for reading Chapter IV of *Foundations of Leninism* by Stalin (Ex. 5) which is entitled "The Dictatorship of the Proletariat." Comparison of the text in the *Outline* relating to this subject with Chapter IV discloses that the text is derived in large part from that chapter. Stalin points out that while the "revolution can vanquish the bourgeoisie, can overthrow its power," the dictatorship is necessary as a means "to crush the resistance of the bourgeoisie" (p. 27). The "conquest of power" as the *Outline* describes it, does not mean a mere change in the personnel of the government. Instead, says Stalin, it is a new state, which "is a revolutionary power based on the use of force against the bourgeoisie" (pp. 52–53). Thus (p. 56)—

> the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law of the revolutionary movement in the imperialist countries of the world.

The *Outline* also assigns for study Lenin's *State and Revolution* (Ex. 7), which was written on the eve of the Bolshevik revolution. In *State and Revolution*, Lenin so unreservedly regarded the use of force and violence as a necessary means to the achievement of the dictatorship of the proletariat that he was at pains to distinguish the Communists from other groups who subscribed to the view that the means are to be peace-

ful (see pp. 18–19). Thus, Lenin says (p. 9) that Kautsky forgot or glossed over the fact that "it is clear the liberation of the oppressed class is impossible not only without a violent revolution, but also without the destruction of the apparatus of state power."

The view that Marx contemplated a gradual development toward socialism rather than "a seizure of power" is dismissed by Lenin as a "vulgar interpretation"; "as a matter of fact, exactly the opposite is the case. Marx's idea is that the working class must break up, shatter the 'ready-made state machinery,' and not confine itself to merely taking possession of it" (Ex. 7, p. 33). Marx's confinement of violent destruction of the state to the European continent is rejected by Lenin in view of subsequent developments in England and the United States (Ex. 7, p. 34):

> Today, in 1917, in the epoch of the first great imperialist war, this exception made by Marx is no longer valid. Both England and America, the greatest and last representatives of Anglo-Saxon "liberty" in the sense of the absence of militarism and bureaucracy, have today plunged headlong into the all-European dirty, bloody morass of military bureaucratic institutions to which everything is subordinated and which trample everything under foot. Today, both in England and in America, the "precondition of any real people's revolution" is the break-up, the shattering of the "ready-made state machinery" (brought in those countries, between 1914 and 1917, to general "European" imperialist perfection).

The dictatorship of the proletariat, says Lenin (Ex. 7, pp. 73–74), results in the establishment of democracy for the victorious revolutionists, but the defeated capitalists must be suppressed by force. This

is the function of the dictatorship; it is a weapon of suppression.

Lesson V relates to "Imperialism—Present Day Capitalism." The present stage of capitalist development is described as imperialism, and the United States is characterized as "the most powerful imperialist force in the world threatening the aspiration of the people of the world for peace, democracy, and progress" (p. 22). This is the stage of dying capitalism, when the capitalist systems are in a period of "general crisis." The imminence of the proletarian revolution is recognized, for there is, then, an "intensification of the class struggle—growth of revolutionary movements" (p. 19).

The reading assigned for self-study in *Foundations of Leninism* (Ex. 5, p. 15) sums up the situation:

> In other words, imperialism has brought it about, not only that revolution has become a practical inevitability, but also that favorable conditions have been created for a direct onslaught upon the citadels of capitalism.

Lesson VII is on the meaning of Socialism. Socialism is described as the establishment of the political power of the working class through a fundamental change in the class control of society—revolution. The lesson poses the following questions for discussion:

> What is revolution? What are the essential pre-conditions for the socialist revolution?

The *Outline*, page 28, sets forth the answer to the second question as follows:

> It is not sufficient for revolution that the exploited and oppressed masses understand the impossibility of living in the old way and demand changes; for revolution it is necessary that the exploiters should not be able to live

and rule in the old way. Only when the "lower classes" do not want the old and when the "upper classes" cannot continue in the old way, then only can the revolution be victorious.

The above answer may appear ambiguous. But the Party member is made to understand its full meaning when he refers to the full quotation appearing in the reading assigned for this lesson in *Foundations of Leninism* (Ex. 5), Chapter III, Part 3, at page 45:

> The fundamental law of revolution, which has been confirmed by all revolutions, and particularly by all three Russian revolutions in the twentieth century, consists in the following: it is not enough for revolution that the exploited and oppressed masses should understand the impossibility of living in the old way and demand changes; for revolution it is necessary that the exploiters should not be able to live and rule in the old way. Only when the "lower classes" cannot carry on in the old way—only then can revolution triumph. This truth may be expressed in other words: *Revolution is impossible without a nationwide crisis (affecting both the exploited and the exploiters).* [My italics.—J. S.] It follows that for revolution it is essential, first, that a majority of the workers (or at least a majority of the class-conscious, thinking, politically active workers) should fully understand the necessity for revolution and be ready to sacrifice their lives for it; secondly, that the ruling classes should be passing through a governmental crisis which would draw even the most backward masses into politics * * * weaken the government and make it possible for the revolutionaries to overthrow it rapidly.

Thus, the lesson instructs the Party member that the "preconditions for the socialist revolution" are (1) a nationwide crisis and (2) that the workers "fully

understand that revolution is necessary and be ready to sacrifice their lives for it."

Going back to the other question in Lesson VII, "What Is a Revolution?", the answer is found in the "Additional Reading" in Stalin's *Problems of Leninism* (Ex. 6). In this book Stalin deals with the necessity for "seizing" power and establishing the dictatorship of the proletariat (pp. 16–19), and then ridicules the idea that this can be achieved without a violent revolution (pp. 19–20):

> Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?
>
> Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution.
>
> It is necessary to insist on this all the more strongly, all the more categorically, since we are dealing with the proletarian revolution which has for the time being triumphed in only one country, a country surrounded by hostile capitalist countries, a country the bourgeoisie of which cannot fail to receive the support of international capital.

That is why Lenin states that "* * * the liberation of the oppressed class is impossible not only without a violent revolution, but also without the destruction of the apparatus of state power, which was created by the ruling class." *Collected Works,* Vol. XXI, Book 11, p. 155; *State and Revolution,* Little Lenin Library, p. 9.

The assertion that the proletarian revolution must depend on the majority of the population supporting it is quickly disposed of as the view of "the henchmen of the bourgeoisie."[48] That support, say Lenin and Stalin, will come with a victorious revolution. Thus (*id.*, pp. 20–21)—

> Let the revolutionary proletariat, first overthrow the bourgeoisie, break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters. (*Collected Works*, Vol. XXIV, p. 647, Russian edition.)
>
> In order to win the majority of the population to its side, Lenin continues, the proletariat must first of all overthrow the bourgeoisie and seize state power and, secondly, it must introduce Soviet rule, smash to pieces the old state apparatus, and thus at one blow undermine the rule, authority and influence of the bourgeoisie and of the petty-bourgeoisie and of the petty-bourgeois compromisers in the ranks of the non-proletarian toiling masses. Thirdly, the proletariat must completely and finally destroy the influence of the bourgeoisie and of the petty-bourgeois compromisers in the ranks of the non-proletarian toiling masses. Thirdly, the proletariat must completely and finally destroy the influence of the bourgeoisie and of the petty-bourgeois compromisers among the majority of the non-proletariat toiling masses by the revolutionary satisfaction of their economic needs at the expense of the exploiters. (Ibid., p. 641)
>
> **Such are the characteristic symptoms of the proletarian revolution.**

---

[48] The same view is expressed in the reading assigned for Lesson VIII, from *Foundations of Leninism* (Ex. 5, Ch. II, pp. 22, 23).

The dictatorship is not a "popular," "elected," or "non-class" government, "and does not deceive either itself or others by talk about popular, elected government, sanctioned by the whole people." (*Id.*, pp. 22–23).

Lesson VIII in the *Outline* deals with the function and structure of the Communist Party in the United States. The Party functions as the organized vanguard of the working class which has "its own discipline, and unity of will and action."

The final lesson, Lesson IX, is on the subject of "Strategy and Tactics," the science of working class leadership. The main aim is described (p. 34) as winning the majority of the working class "for the revolutionary struggle against capitalism," and the essence of strategy and tactics is to "Find [the] main link which will set large numbers of masses into motion and prepare them for final struggle."

The readings in *Strategy and Tactics* (Ex. 13, pp. 46–48) point out that one aspect of correct tactics is the combining of legal and illegal activities in aid of the proletarian revolution:

> * * * Inexperienced revolutionaries often think that legal methods of struggle are opportunistic because in this field the bourgeoisie particularly frequently (especially in "peaceful," non-revolutionary times) deceived and fooled the workers, and they think that illegal methods of struggle are revolutionary. But this is not true. What is true is that the opportunists and the traitors to the working class are those parties and leaders who are not able or who do not want (don't say: you cannot; say: you won't) to apply illegal methods of struggle in conditions such as those which prevailed, for example, during the imperialist war of 1914–18, when the bourgeoisie of the freest democratic countries deceived the workers in the most impudent

> and brutal manner and prohibited everyone from speaking the truth about the predatory character of the war. But revolutionaries who are unable to combine illegal forms of struggle with every form of legal struggle are very poor revolutionaries * * *. The main task of contemporary Communism in Western Europe and America is to acquire the ability to seek, to find, to determine correctly the concrete path or the particular turn of events that will bring the masses right up to the real, decisive, last and great revolutionary struggle.

But when the masses are "right up" to the last and great revolutionary struggle the reading cited in *Strategy and Tactics* (Ex. 13, p. 66) points out the course to follow:

> When the revolutionary tide is rising, when the ruling classes are disorganized, the masses are in a state of revolutionary ferment, the intermediary strata are inclining towards the proletariat and the masses are ready for action and for sacrifice, the Party of the proletariat is confronted with the task of leading the masses to a direct attack upon the bourgeois state. This it does by carrying on propaganda in favor of increasingly radical transitional slogans (for soviets, workers' control of industry, for peasant committees, for the seizure of the big landed properties, for disarming the bourgeoisie and arming the proletariat, etc.) and by organizing mass action, upon which all branches of Party agitation and propaganda, including parliamentary activity, must be concentrated. This mass action includes: Strikes; a combination of strikes and demonstrations; a combination of strikes and armed demonstrations and finally, the general strike conjointly with armed insurrection against the state power of the bourgeoisie. The latter form of struggle, which is the supreme form, must be conducted according to the rules of war; it presupposes a

> plan of campaign, offensive fighting operations and unbounded devotion and heroism on the part of the proletariat. An absolutely essential condition precedent to this form of action is the organization of the broad masses into militant units, which, by their very form, embrace and set in action the largest possible numbers of toilers (Councils of Workers, and Peasants' Deputies, Soldiers' Councils, etc.), and intensified revolutionary work in the army and navy.

Testimony concerning another *Outline* issued by the National Education Commission was given by Government witness Clontz (Tr. 663–664).[*] In August 1950, on petitioner's recommendation, Clontz attended the Jefferson School of Social Science (R. 52–53), a Party front organization in New York City (R. 25). In a course which he taught on "Teaching of Marxism," Doxey Wilkerson, the School Director and liaison officer with National Communist Party Headquarters (R. 53), commented on this *Outline* as follows (Tr. 663–664):

> * * * [F]or the record the National Party had ordered all these outlines and study materials called in. * * * [A]fter the first trials that took place in New York it had been established that Marxism-Leninism was revolution and for that reason any books that preached revolution were being brought in or discontinued and from that period on, after August of 1950, many things would be left unwritten, many things would be left unsaid so far as the

[*] Clontz was a confidential informant who reported to the FBI on Party activities in North Carolina and elsewhere from 1948 until 1952, when he ceased his Party activities. He remained in close and constant association with petitioner during all of this period (Tr. 560–567). Clontz was graduated from Davidson College in 1947 (Tr. 555) and from Duke University Law School in 1950 (Tr. 559). At the time of the trial he was a practicing attorney in Charlotte, North Carolina (Tr. 555).

public was concerned, but would have to be interpreted by members of the Party who, after all, would know that the basic strategy of the Communist Party would never change, that is, overthrowing the government and bringing a Communist United States here.

APPENDIX B

In the United States District Court for the Middle District of North Carolina

No. 4230-G

UNITED STATES OF AMERICA

vs.

JUNIUS IRVING SCALES

FINDING OF FACT, CONCLUSION OF LAW AND ORDER

This cause having come before the Court by virtue of a motion filed by the defendant to dismiss the indictment because of the illegal selection of the grand jury panel which returned the indictment in the above entitled cause, and the Court having considered said motion and the briefs of counsel for the defendant and for the United States of America on said motion, and having heard such evidence and legal arguments in open court on April 1, 1965, as the defendant and the United States of America desired to present, and having fully considered all the facts as well as the law involved, makes the following findings of fact:

1. That the defendant was indicted by the Grand Jury for the Middle District of North Carolina at Wilkesboro, North Carolina on November 18, 1954 and that the defendant was arrested shortly thereafter in Memphis, Tennessee.

2. That on December 7, 1954, the defendant was brought before the United States District Court, Middle District of North Carolina for the purpose

of arraignment at which time the defendant was without counsel and declined an offer of the Court to appoint counsel.

3. That the defendant was again brought before the District Court on December 16, 1954, at which time the Court appointed counsel to represent the defendant for the sole purpose of arraignment and upon his arraignment the defendant pleaded not guilty.

4. That before the defendant was arraigned the Court entered an order that the plea to the charge in the indictment by the defendant would not constitute, on the part of the defendant, a waiver to his right to file pre-trial motions in this case before the 5th of January, 1955.

5. That upon the request of counsel and acquiesced in by the defendant, the time for filing pre-trial motions was extended from the 5th of January to the 14th of January, 1955.

6. That the defendant failed to file any pre-trial motions by the 14th of January, 1955. However, on this date the defendant appeared in Court with counsel, Mr. Ruben Terris, who, after requesting 60 days extension to file pre-trial motions and a discussion regarding such extension, was granted until the 18th of February, 1955, to file any and all pre-trial motions.

7. That the Court set the 2nd of March, 1955, as the date by which replies by the Government to all pre-trial motions must be made and the 8th of March, 1955, for the date of hearing on such motions. The Court at that time also set the 11th of April, 1955, for the trial.

8. That pre-trial motions were filed by Mr. David Rein, counsel for the defendant on the 18th of Feb-

ruary, 1955: That the Government filed its answers on or before the 2nd of March, 1955.

9. That on the 8th of March, 1955, 23 days after the deadline set for filing pre-trial motions, counsel for the defendant indicated for the first time he might desire to file a motion attacking the grand jury.

10. That the defendant was granted at his first request 29 days from the date of arraignment for filing motions: That he was later granted 35 days more: and that he was granted a total of 65 days from the date of his arraignment in which to file pre-trial motions.

11. That the defendant did not file his motion attacking the grand jury until 24 days after the deadline of the 18th of February, 1955, had expired and 88 days after the date of the arraignment, which was the 16th of December, 1955.

12. That the information necessary to support defendant's motion attacking the grand jury was available to the defendant and/or his counsel at the time of his indictment and had been available at all times within the period set by the Court for the filing pre-trial motions.

13. That there was no attempt by the defendant or his counsel to show cause or excuse for the delay in filing the motion attacking the grand jury.

14. That the Clerk of the District Court and the Jury Commissioners of this District would jointly send out to reputable citizens (sponsors) of knowledge and character who knew the people in their community, several different types of form letters requesting each of these sponsors to furnish a list of names of individuals suitable for jury service.

15. That the various form letters would request that the sponsors would furnish on their lists, names of

women, negroes, freeholders and persons affiliated with both the Democratic and Republican Parties.

16. That the word "Freeholder" as set forth in one of the exhibits was by no means a restriction, but was simply the designation of another source to be tapped for the names of prospective jurors.

17. That there was no intimation of any discrimination in favor of or against any particular class, by reason of political or religious faith, or race, color, or sex, or any other classification.

18. That the evidence failed to disclose any delegation of duty by the Clerk of the District Court or by the Jury Commissioner in selection of prospective jurors for service.

19. That the Clerk and Jury Commissioner exercised reasonable screening of the prospective jurors in that the Clerk and Jury Commissioner examined the names and reasonably measured each prospective juror against the statutory requirements.

20. That examination of the prospective jurors was also made by the Clerk and Jury Commissioner by availing themselves of the judgment of persons who were familiar with the prospective jurors and the areas from which they were drawn.

21. That the method used in the selection of Grand Juries was substantially the same for all the divisions of this District except that the prospective jurors for each division reside in that division.

22. That the Clerk of the District Court and the Jury Commissioner supervised and directed the selection of all names of prospective jurors, including those names inserted into the jury box for the Wilmington Division of this Court.

23. That there is a new jury box for each division made every five years; in years evenly divisible by five.

24. That the Clerk of the District Court or his deputy and the Jury Commissioner for each respective division when filling the jury box for that division, would insert into the jury box the names of prospective jurors alternately, and one name at a time until the jury box contained the number of names required by the Courts Order.

25. That when the Clerk of the District Court and the Jury Commissioner inserted names into the jury box, they did so without any regard to the race, creed, color, sex or political affiliation of such person.

26. That in making up the jury box for each division there was no attempt on the part of the Clerk of the Court or the Jury Commissioner to systematically or intentionally exclude any class or group of persons from the jury box.

27. That from the names in the jury box prospective jurors were drawn and summoned for jury service. That on the reverse side of the summons was a questionnaire asking various questions regarding the name, address, occupation, citizenship, prior jury service, prior convictions, which the prospective jurors were to fill out and return to the Clerk.

28. That, although many questionnaires were not completely answered, the Clerk of the Court or his deputy would examine the answers on each questionnaire.

29. That from the group of prospective jurors summoned nineteen were drawn by a child of tender years to serve as the Grand Jury. That the remaining prospective jurors would form the petit jury panel.

That upon the foregoing facts it is concluded as a matter of law that the motion of defendant to dismiss the indictment in this case because the grand jury was illegally selected was not timely filed. It is further concluded that the evidence did not show any prejudicial defects that would result in a denial to the defend-

ant of any of his rights and that there was not any serious or substantial departure or deviation from the statutory requirements.

Of course, passing on the merits is not necessary because the motion has been rejected for its tardiness; however, the Court feels that, if there is any error in refusing the motion on the time element, it is proper to, and the Court should, pass upon the merits.

The Court denies this motion.

/s/ ALBERT V. BRYAN,
United States District Judge.

GREENSBORO, N. C., *April 15, 1956.*

U. S. GOVERNMENT PRINTING OFFICE, 1956